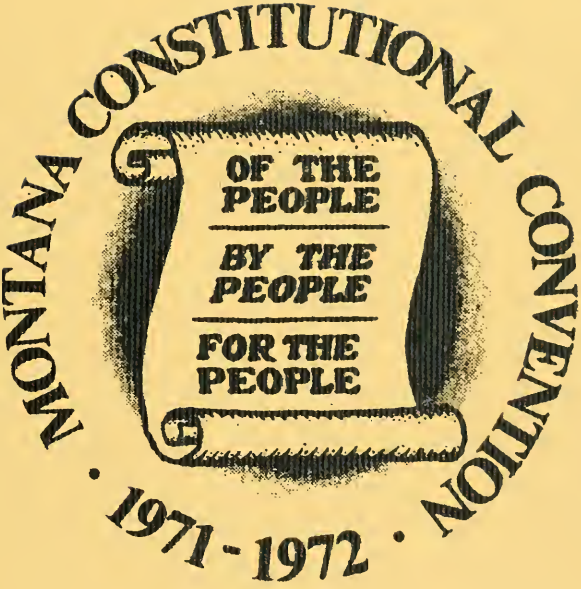
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MONTANA CONSTITUTIONAL CONVENTION

1971-1972

NATURAL RESOURCES AND AGRICULTURE COMMITTEE PROPOSAL

No. VI

Date Reported: February 18, 1972

/s/ Louise Cross
Chairman

/s/ E. S. Erv Gysler
Vice Chairman

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Date: February 17, 1972

To: MONTANA CONSTITUTIONAL CONVENTION

From: Natural Resources and Agriculture Committee

Ladies and Gentlemen:

The Natural resources and Agriculture Committee herewith submits a proposed new Article on "The Environment and Natural Resources" and a proposed new Article on Agriculture. The latter Article is intended to replace reference to Agriculture in section 1, Article XVIII in the present Constitution, and the words relating to the special levy on livestock in Article XII, section 9.

As a result of its deliberations, the committee has drawn up a new proposed Article on environment and natural resources. The Article requires that: the state and each person maintain and enhance the environment; legislative responsibility; and a provision for protection.

Separate sections dealing with land reclamation, water and cultural resources are part of the new proposed Article.

The environmental and natural resources proposal is submitted as a majority report as is the new proposed Article on Agriculture.

The minority report, a proposed last section to the new Article on the environment and natural resources, would provide a Montana resident with a right to appropriate legal proceedings

against a government agency charged by law with the implementation and enforcement of said provision.

The members of this Committee, by signing the majority report, do not necessarily sanction each and every statement contained in this report. The minority report is an expression of those members who feel that such expression, while differing from that of the majority, merits consideration by the committee of the whole.

The testimony of 95 witnesses in 165 appearances was utilized by the committee. (See Appendix C)

The committee wishes to thank its Research Analyst, Charles Sullivan; its Secretary, Elaine Fung; Student Intern, Mona Earley; and Dave and Lee Ann Jersey.

/s/ C. Louise Cross,
Chairman

/s/ E. S. Fry Cysler,
Vice Chairman

MAJORITY PROPOSAL

BE IT PROPOSED BY THE NATURAL RESOURCES AND AGRICULTURE COMMITTEE:

That there be a new Article on the Environment and Agriculture to read as follows:

ARTICLE ___

ENVIRONMENT AND NATURAL RESOURCES

Section 1. PROTECTION AND ENHANCEMENT. (1) The State of Montana and each person must maintain and enhance the environment of the state for present and future generations.

(2) The legislature must provide for the administration and enforcement of this duty.

(3) The legislature is directed to provide adequate remedies for the protection of the environmental life support system from degredation and to provide adequate remedies to prevent unreasonable depletion of natural resources.

Section 2. RECLAMATION. All lands disturbed by the taking of natural resources must be reclaimed to as good a condition or use as prior to the disturbance. The condition or use to which the land is to be reclaimed and the method of enforcement of the reclamation must be established by the legislature.

Section 3. WATER RIGHTS. (1) All existing rights to the use of any waters in this state for any useful or beneficial purpose are hereby recognized and confirmed.

(2) The use of all water now appropriated, or that may hereafter be appropriated for sale, rental, distribution, or other beneficial use, and the right-of-way over the lands of others, for all ditches, drains, flumes, canals, and aqueducts, necessarily used in connection therewith, as well as the sites for reservoirs necessary for collecting and storing the same, shall be held to be a public use.

(3) All surface, underground, flood, and atmospheric waters within the boundaries of the state of Montana are declared to be the property of the state for the use of its people and subject to appropriation for beneficial uses as provided by law.

(4) Benficial uses include, but are not limited to, domestic, municipal, agriculture, stockwatering, industry, recreation, scenic waterways, and habitat for wildlife, and all other uses presently recognized by law, together with future beneficial uses

as determined by the legislature or courts of Montana. A diversion or development work is not required for future acquisition of a water right for the foregoing uses. The legislature shall determine the method of establishing these future water rights which do not require a diversion and may designate priorities for those future rights if necessary.

(5) Priority of appropriation for beneficial uses shall give the better right. No appropriation shall be denied except when such denial is demanded by the public interests.

(6) The legislature shall provide for the administration, control and regulation of water rights and shall establish a system of centralized records.

Section 4. CULTURAL RESOURCES. The legislature must provide for the identification, acquisition, restoration, enhancement and preservation of scenic, historic, archeologic, scientific, cultural and recreational areas, sites and objects, and their use and enjoyment by the people.

/s/ Louise Cross
Chairman

/s/ E. S. "Fry" Cysler
Vice Chairman

/s/ Geoffrey L. Brazier

/s/ Henry I. Siderius

/s/ John H. Anderson, Jr.

/s/ A. W. Kamhoot

/s/ Douglas Delaney

/s/ Charles P. McNeil

/s/ Donald Bebal

COMMENTS ON MAJORITY PROPOSAL

ARTICLE ___

ENVIRONMENT AND NATURAL RESOURCES

Section 1. PROTECTION AND ENHANCEMENT. (1) The state of Montana and each person must maintain and enhance the environment of the state for present and future generations.

(2) The legislature must provide for the administration and enforcement of this duty.

(3) The legislature is directed to provide adequate remedies for the protection of the environmental life support system from degredation and to provide adequate remedies to prevent unreasonable depletion of natural resources.

COMMENTS

Your committee presents and recommends in its proposal the strongest Constitutional environmental section of any existing state Constitution.

Subsection (1) requires the state and each person, which of course includes corporations and all legal entities as well as individuals, to maintain and enhance the Montana environment for present and future generations. Your committee considered at length an exhaustive list of descriptive adjectives to precede the word environment such as "healthful", "pleasing", "quality", "high quality", "unsullied", and "unique" and finally concluded that no descriptive adjective was adequate or necessary. This was not a compromise but rather an acknowledgment of the present Montana environment.

Constitutional provisions of other states were studied but none were considered adequate as no other state has Montana's environment and therefore your committee felt that the best recommendation is to require that all must maintain and enhance the Montana Environment.

Subsection (2) mandates the legislature to administer and enforce the duty to maintain and enhance the Montana environment. Your committee was urged by many to detail the manner of accomplishing this duty but the temptation to legislate in the Constitution was resisted and confidence reposed in the legislature. To those who may lack such confidence in the elected representatives of the people the clear and concise duty to maintain and enhance the Montana environment cannot be contravened.

Your committee considered two Delegate Proposals which

declared in substance that the State of Montana hold in Public Trust the environment, for the benefit of all the people of the state. The majority felt it unnecessary to have the state hold in trust all land, including of course privately owned real property, for the benefit of all the people of the state in order to accomplish the protection of our environment. In addition the majority felt it unwise to experiment by incorporating into the Constitution a "Public Trust" which was not clearly defined to the committee, which is not contained in the Constitution of any other state, and which exists in its infancy in only two states by legislation.

Subsection (3) mandates the legislature to provide adequate remedies to protect the environmental life support system from degradation. The committee intentionally avoided definitions to preclude being restrictive and the term "environmental life support system" is all encompassing including, but not limited to air, water, and land and whatever interpretation is afforded this phase by the legislature and courts; there is no question that it cannot be degraded.

Subsection (3) further mandates the legislature to provide adequate remedies to prevent unreasonable depletion and degradation of natural resources. Although it is recognized that some non-renewable natural resources are to be consumed this provision permits the legislature to determine whether the resource is being unreasonably depleted and requires preventive remedies.

The committee considered proposals which would give individuals a right to sue without the necessity of showing some damage. The majority concluded that Montana's present law providing for class action under which litigation is presently pending involving multitudes of claimants against a single alleged polluter is adequate. However the majority feels that this is not a compromise because the majority proposal requires the legislature to provide whatever remedies are necessary to prevent degradation and unreasonable depletion.

The majority of the committee believes that this is the best Article for the protection of the Montana environment for its people.

> Section 2. RECLAMATION. All lands disturbed by the taking of natural resources must be reclaimed to as good a condition or use as prior to the disturbance. The condition or use to which the land is to be reclaimed and the method of enforcement of the reclamation must be established by the legislature.

COMMENTS

Your committee finds it necessary to direct the legislature to recognize the demands of this and future generations and that our natural resources must be used to be enjoyed, but only with

judicious use and reclamation.

Because Montana has at least 500,000 acres of strippable coal land and untold acres of other natural resources, your committee believes the responsibilities of protecting and restoring the surface conditions of those lands for unborn generations should not be left to men, but rather protected by fundamental law.

Section 3. WATER RIGHTS. (1) All existing rights to the use of any waters in this state for any useful or beneficial purpose are hereby recognized and confirmed.

(2) The use of all water now appropriated, or that may hereafter be appropriated for sale, rental, distribution, or other beneficial use, and the right-of-way over the lands of others, for all ditches, drains, flumes, canals, and aqueducts, necessarily used in connection therewith, as well as the sites for reservoirs necessary for collecting and storing the same, shall be held to be a public use.

(3) All surface, underground, flood, and atmospheric waters within the boundaries of the state of Montana are declared to be the property of the state for the use of its people and subject to appropriation for beneficial uses as provided by law.

(4) Beneficial uses include, but are not limited to, domestic, municipal, agriculture, stockwatering, industry, recreation, scenic waterways, and habitat for wildlife, and all other uses presently recognized by law, together with future beneficial uses as determined by the legislature or courts of Montana. A diversion or development work is not required for future acquisition of a water right for the foregoing uses. The legislature shall determine the method of establishing those future water rights which do not require a diversion and may designate priorities for those future rights if necessary.

(5) Priority of appropriation for beneficial uses shall give the better right. No appropriation shall be denied except when such denial is demanded by the public interests.

(6) The legislature shall provide for the administration, control and regulation of water rights and shall establish a system of centralized records.

COMMENTS

Your committee feels that water and water rights are of crucial importance to the past history and future development of

the State of Montana. For this reason the committee feels justified in expanding the present Constitutional section which relates solely to the use of water to include provisions for the protection of the waters of the state for use by its people.

Subsection (1) guarantees all existing rights to the use of water and includes all adjudicated rights and nonadjudicated rights including water rights for which notice of appropriations has been filed as well as rights by use for which no filing is of record.

Subsection (2) is a verbatim duplication of Article III, section 15 of the present Constitution and has been retained in its entirety to preserve the substantial number of court decisions interpreting and incorporating the language of this section.

Subsection (3) is a new provision to establish ownership of all waters in the state subject to use by the people. This does not in any way affect the past, present or future right to appropriate water for beneficial uses and is intended to recognize Montana Supreme Court decisions and guarantee the state of Montana standing to claim all of its waters for use by the people of Montana in matters involving other states and the United States Government.

Subsection (4) is a new provision to permit recreation and stockwatering to acquire a water right without the necessity of a diversion. This applies only to future rights and, of course, only to waters for which there are no present water rights. This subsection further provides that future agricultural and industrial water development will not be foreclosed by recreation, as it is left up to the legislature to determine the method of establishing a future water right without a diversion and the legislature is further authorized to establish priorities of water uses for those waters where the legislature decrees priorities necessary.

Subsection (5) acknowledges a continuance of our present water law principle that the first appropriation in time is the better right and provides that no future appropriations shall be denied except in the public interest.

Subsection (6) mandates the legislature to administer, control and regulate water rights. This does not in any way change the present legislatively established system of local control of adjudicated waters by water commissioners appointed by the District Court having jurisdiction. A new requirement is added to establish a system of centralized records of all water rights in addition to the present statutory system of local filing of records. The centralized records are intended to provide a single location for water rights information and a complete record of all water rights.

Section 4. CULTURAL RESOURCES. The legislature must provide for the identification, acquisition, restoration, enhancement and preservation of scenic, historic, archeologic, scientific, cultural and recreational areas, sites, and objects, and their use and enjoyment by the people.

COMMENTS

In response to widespread citizen and delegate interest in preserving our ghost towns, as well as our scenic, archeologic, scientific, cultural and recreational areas, sites and objects your committee proposes this self-explanatory section. The committee felt that such a section was appropriate in an article providing for protection of our total environment for this and future generations.

MAJORITY PROPOSAL

BE IT PROPOSED BY THE NATURAL RESOURCES AND AGRICULTURE COMMITTEE:

That there be a new Article on Agriculture to read as follows:

ARTICLE ___

AGRICULTURE

Section 1. DEPARTMENT OF AGRICULTURE. The legislative assembly must provide for a Department of Agriculture and enact laws and provide appropriations to protect, enhance and develop all agriculture of the state.

Section 2. RIGHT TO SPECIAL LEVIES. A special levy may be made on livestock and on agricultural commodities for the purpose of disease control and indemnification, predator control, livestock inspection and protection, agricultural commodity inspection and protection, livestock and agricultural commodity research and promotion.

/s/ Louise Cross
Chairman

/s/ F. S. "Fry" Gysler
Vice Chairman

/s/ Geoffrey L. Brazier

/s/ John H. Anderson, Jr.

/s/ Douglas Delaney

/s/ Henry L. Siderius

/s/ A. W. Kamhoot

/s/ Charles B. McNeil

/s/ Donald Retal

COMMENTS ON MAJORITY PROPOSAL

Section 1. DEPARTMENT OF AGRICULTURE. The legislative assembly must provide for a department of Agriculture and enact laws and provide appropriations to protect, enhance and develop all agriculture of the State.

COMMENTS

Your committee believes that it is necessary to recognize the largest and most important industry in the state by retaining the Constitutional provision for a Department of Agriculture and to require that the legislature provide appropriations and authorities to adequately protect, enhance and develop the agricultural industry of the state.

This new section is intended to remove any reference to agriculture from Article XVIII, section 1 of our Constitution and to be the first section of a new article on agriculture.

Section 2. RIGHT TO SPECIAL LEVIES. A special levy may be made on livestock and on agricultural commodities for the purpose of disease control and indemnification, predator control, livestock inspection and protection, agricultural commodity inspection and protection, livestock and agricultural commodity research and promotion.

COMMENTS

This section is a revision of Article XII, section 9. Because of the excellent results of the livestock mill levy, your committee believes all of agriculture should benefit from this method of self-help taxation. However, your committee feels that setting the rate, as was previously done, is a legislative function to be exercised in response to industry needs.

MINORITY PROPOSAL

BE IT PROPOSED BY THE NATURAL RESOURCES AND AGRICULTURE COMMITTEE:

That the following subsection be added as subsection (4) to section 1 of the Environment and Natural Resources Majority Proposal:

Section (4). Any Montana resident has the right to appropriate legal proceedings against any governmental agency charged by law with the implementation and enforcement of any provision of this Article.

/s/ C. Louise Cross
Chairman

/s/ Charles B. McNeil

/s/ Henry L. Siderius

COMMENTS ON MINORITY PROPOSAL

Section (4). Any Montana resident has the right to appropriate legal proceedings against any governmental agency charged by law with the implementation and enforcement of any provision of this Article.

COMMENTS

The minority report, a proposed subsection to section 1 of the new Article on the environment and natural resources, would provide a Montana resident with a right to appropriate legal proceedings against a government agency charged by law with the implementation and enforcement of said provision.

This is intended to grant an individual a Constitutionally guaranteed direct legal remedy to compel the performance by state agencies of the duty to implement and enforce the provisions of the Environment section.

APPENDIX A

CROSS REFERENCES

PROPOSED SECTIONS OF ENVIRONMENTAL ARTICLE	PRESENT ARTICLE & SECTION
1	None
2	None
3	III, 15, with revision
4	None
None	XIX, 3

PROPOSED SECTIONS OF AGRICULTURE ARTICLE	PRESENT ARTICLE & SECTION
1	XVIII, 1, with revision
2	XII, 9, with revision

APPENDIX B

PROPOSALS CONSIDERED BY COMMITTEE

The following delegate proposals were examined and considered by the Natural Resources and Agriculture Committee during its deliberations:

	Number of Proposal	Chief Sponsor	Subject Matter	Disposition
1.	1	Berthelson	Establishing Public Policy on Environmental Quality	Rejected
2.	2	Berthelson	Providing for Water Rights	Adopted in part
3.	12	Cate	Protecting the Environment	Rejected
4.	20	McNeil	Providing a Public Policy of a Quality Environment	Adopted in part
5.	21	McNeil	Guaranteeing an Individual's Right to a Quality Environment	Adopted in part
6.	48	Etchart	Providing for Water Rights	Adopted in part
7.	83	Jacobsen	Providing for Acquisition of Historic Sites	Adopted in part
8.	93	Siderius	Providing for a Collective Bargaining	Referred to Bill of Rights Committee with Affirmative Recommendation

	Number of Proposal	Chief Sponsor	Subject Matter	Disposition
9.	96	Erdmann	Irrigating and Water Rights	Adopted in part
10.	104	Kelleher	Reserving to the People of Montana All Subsurface Rights Except Under School & Indian Lands	Rejected
11.	114	Bugbee	Public Sightliness and Good Order	Rejected
12.	117	Bates	Providing for a Department of Agriculture	Adopted in part
13.	127	Davis	Providing for Water Rights	Adopted in part
14.	135	Davis	Providing for the Exchange of Public Lands	Referred to Education and Public Lands Committee
15.	162	Cross	Environment as Public Trust	Rejected

APPENDIX C

WITNESSES HEARD BY COMMITTEE

Name - Affiliation - Residence - Subject

1. Gary J. Wicks - Chairman, Department of Natural Resources - Helena - Duties and Problems of department.

2. James T. Harrison, Jr. - Counsel, Department of Natural Resources - Helena - Information about Department of Natural Resources.

3. Ronald J. Gusa - Employee of Department of Natural Resources - Helena - Information about Department of Natural Resources.

4. Hans L. Bille - Employee of Department of Natural Resources - Helena - Information about Department of Natural Resources.

5. Mike Schwinden - Employee of Department of Natural Resources - Helena - Information about Department of Natural Resources.

6. James Posewitz - Director - Division for Environmental Protection, Department of Fish and Game - Helena - Duties and background of division.

7. Ted Schwinden - Commissioner of Public Lands - Helena - Duties of Office.

8. Cate Butler - Public Information Officer, Department of Agriculture - Helena - Duties and problems of department of Agriculture.

9. Jack Behlberg - Montana Petroleum Producers - Billings - Pollution of underground waters.

10. John Goers - Geologist, Department of Public Lands - Helena - Mining and minerals laws.

11. P. R. McDonald - Anaconda Company - Butte - Environment.

12. Douglas Smith - Agriculture Coordinator - Helena - Agriculture.

13. Bill Cheney - Executive Officer, Department of Livestock - Helena - Livestock mill levy.

14. Ben Wake - Administrator, Division of Environmental Sciences, Department of Health & Environmental Sciences - Helena - Air.

15. John C. Spindler - Anaconda Company - Butte - Water.

16. Fred Johnston - Lawyer-rancher - Great Falls - Lessee of state lands.

17. Dolores Colberg - Superintendent of Public Instruction - Helena - Public lands.

18. Maurice Hickey - Director of Field Services, Montana Educational Association - Helena - Use of state lands for public schools.

19. Fletcher Newby - Executive Director, Environmental Quality Council - Helena - Environmental quality.

20. C. B. Anderson - Part-time professor at Western Montana College - Dillon - State lands.

21. Al Kington - Chief Forester, Division of Forestry - Fort Harrison - Operations of department.

22. John Bounds - Anaconda Wood Products Company - Bonner - Operations of plant.

23. Lester Tschannen - Evans Products Co. - Missoula - Forests and timber.

24. John Schultz - Tree Loggers, Inc. - Missoula - Forests and timber.

25. Chet Dreher - Representative of Congressman Shoup - Helena - Environment.

26. Paul Richards - Governor's Conference on Youth - Helena - Environment.

27. Irving Boettger - Engineer with private concern - East Helena - Environment.

28. Bill Cunningham - Professor, University of Montana Forestry School - Missoula - Public trust and environment.

29. William C. Hollenbaugh - Professor, University of Montana Forestry School - Missoula - Environment.

30. George Darrow - Representative, Yellowstone County, District 8 - Billings - Environment.

31. Robert E. LeProuse - Anaconda Company - Missoula - Environment.

32. Cecil Garland - Private business - Lincoln - Environment.

33. Darlene L. Grove - Housewife - Helena - Environment.

34. Mavis McKelvey - League of Women Voters - Missoula - Environment.

35. William D. Tomlinson - Montana Wildlife Federation - Missoula - Environment.

36. Dale Fredlund - Professor, Department of Anthropology, University of Montana - Missoula - Cultural resources.

37. Richard L. Hodder - Montana Agriculture Experiment Station - Bozeman - Reclamation.

38. Frank J. Laird, Jr. - Anaconda Company - Butte - Pollution.

39. Gene A. Tuma - Peabody Coal Company - Forsyth - Reclamation.

40. Leonard Campbell - Regional Counsel, Environmental Protection Agency - Denver, Colorado - Environment.

41. Irwin Dickstein - Environmental Protection Agency - Denver - Environment.

42. Robert DeSpain - Environmental Protection Agency - Denver - Environment.

43. Keith Schwab - Environmental Protection Agency - Denver - Environment.

44. Dave Wagoner - Environmental Protection Agency - Denver - Environment.

45. Patricia Antonick - Housewife - Helena - Environment.

46. Sam Gillully - Director, Montana Historical Society - Helena - Cultural resources.

47. Richard Reese - Chairman, Department of Political Science, Carroll College - Helena - Environment.

48. George Lackman - Commissioner of Agriculture - Helena - Department of Agriculture.

49. Larry Blazing - Forester - Missoula - Forests and timber.

50. Marvin McMichels - Montana Wood Products Association - Missoula - Forests and Timber.

51. Fred Wetzstein - Farmer - Sula - Water rights.

52. Albert W. Stone - Professor, University of Montana - Missoula - Water use and rights.

53. Elmer Cox - President, Montana National Farmers Organization - Fort Benton - Water rights and use.

54. Charles Bowman - Head of Agricultural Experiment Station - Bozeman - Water.

55. James A. Stewart - Montana Quality Commodities, Inc. - Glasgow - Water.

56. Alex Mogan - Montana Quality Products, Inc. - Glasgow - Water.

57. Clyde Jarvis - President of Montana Farmers Union - Great Falls - Water.

58. Senator Gordon McGowan - Rancher & Senator - Highwood - Water.

59. Senator McOmber - Rancher & Senator - Water.

60. Mons Teigen - Secretary, Montana Stockgrowers Association - Helena - Water.

61. David A. Smith - Secretary-Treasurer, Montana Wool Growers Association - Helena - Water.

62. Philip Donally - Montana Weed Control Association - Superior - Pesticides.

63. Jim Kallin - Montana Weed Control Association - Missoula - Pesticides.

64. Viggo Anderson - Grain Farmer - Great Falls - Agriculture.

65. Jim Stephens - Pres., Montana Grain Growers Assn. - Dutton - Agriculture.

66. Gretchen Billings - Helena - Executive Secretary, Montana Council of Cooperatives - Department of Agriculture.

67. Clifford Stoltz - Grain and livestock operator - Valier - Department of Agriculture.

68. George Skarda - Wheat farmer - Denton - Department of Agriculture.

69. Harvey Griffin - Rancher - Bozeman - Water.

70. John C. Baugh - Farmer - Bozeman - Water.

71. Oliver Lefevre - Rancher - Billings & Sheridan - Land.

72. John Kay - Teacher - Hamilton - Water rights.

73. Dr. Clarcy Gordon - Professor, University of Montana - Missoula - Environment and pollution.

74. Bill Baird - Real estate - Billings - Land.

75. Gene Picotte - Attorney, representing Montana - Dakota Utilities - Helena - Delegate Proposal #162.

76. Senator Lee Metcalf - Senator for Montana - Washington, D. C. - Delegate Proposal #162.

77. Bill Leaphart - Senior at U of M Law School - Missoula Public Trust in Delegate Proposal #162.

78. Patricia Dee Meier - GASP - Missoula - Delegate Proposal #162.

79. Ray Gardner - Society of American Foresters - Kalispell - Delegate Proposal #162.

80. Dr. James N. Brogger - Western Montana Fish and Game Association - Missoula - Delegate Proposal #162.

81. Robert D. Watt - Montana Student President Association - Helena - Delegate Proposal #162.

82. Doris Milner - Citizens of Ravalli County - Hamilton - Delegate Proposal #162.

83. Mrs. Gene Allen - Rancher - Drummond - Public Trust (Delegate Proposal #162).

84. Hubert G. White - Montana Water Development Association - Townsend - Water.

85. Ray Gulick - farmer - Joplin - Agriculture.

86. Terry Murphy - Representative and farmer - Cardwell - Agriculture.

87. Edward J. Melby - Farmer - Melt - Agriculture.

88. Gordon Matheson - Grain Farmer - Conrad - Agriculture.

89. Bob Ward - Farmer-rancher - Bozeman (Gallatin Valley) - Agriculture.

90. Ed Lenhardt - High Line Ditch Company - Billings - Water rights.

91. Bill Staley - Big Ditch Company - Billings - Water rights.

92. Hans Roffler - Society American Foresters - Missoula - Timber.

93. Tim Richmond - Anaconda Forest Products - Missoula - Timber.

94. Paul Kipp - Forester, Bureau of Indian Affairs - Billings - Timber.

95. Larry Magone - Plum Creek Lumber Company - Whitefish - Timber.

APPENDIX D

ROLL CALLS ON MAJORITY PROPOSAL

ROLL CALL VOTE --- ENVIRONMENT AND NATURAL RESOURCES COMMITTEE

MEMBER Section	Date: No: 1	Date: No: 2	Date: No: 3	Date: No: 4	Date: No:	Date: No:	Date: No:	Date: No:
CROSS	N	Y	Y	Y				
GYSLER	Y	Y	Y	Y				
ANDERSON	Y	N	Y	Y				
BRAZIER	Y	Y	Y	N				
DELANEY	Y	N	Y	Y				
KAMHOOT	Y	Y	Y	Y				
MC NEIL	Y	Y	Y	Y				
REBAL	Y	Y	Y	Y				
SIDERIUS	N	Y	Y	Y				
TOTAL----------YEA	7	6	9	8				
NAY	2	3	0	1				
ABSENT	0	0	0	0				

APPENDIX D

ROLL CALLS ON MAJORITY PROPOSAL

ROLL CALL VOTE --- AGRICULTURE COMMITTEE

MEMBER SECTION	Date: No: 1	Date: No: 2	Date: No:	Date: No:	Date: No:	Date: No:	Date: No:	Date: No:
CROSS	Y	N						
GYSLER	Y	Y						
ANDERSON	Y	Y						
BRAZIER	Y	N						
DELANEY	Y	Y						
KAMHOOT	Y	Y						
MC NEIL	Y	Y						
REBAL	Y	Y						
SIDERIUS	Y	N						
TOTAL----------YEA	9	6						
NAY	0	3						
ABSENT	0	0						

APPENDIX D

ROLL CALLS ON MINORITY PROPOSAL

MEMBER	PROPOSED SECTION	5 for Environment & Natural Resources Majority Proposal														TOTAL Y	TOTAL N	TOTAL A
CROSS, Chairman		Y																
GYSLER, Vice Chairman		N																
ANDERSON		N																
BRAZIER		N																
DELANEY		N																
KAMHOOT		N																
MC NEIL		Y																
REBAL		Y																
SIDERIUS		Y																
TOTAL	YEA	4																
	NAY	5																
	ABSENT	0																

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

REVENUE AND FINANCE

COMMITTEE PROPOSAL ON CONSTITUTIONAL REVISION

No. VII

Date Reported: February 18, 1972

/s/ Sterling Rygg, CHAIRMAN

/s/ Maurice Driscoll, VICE CHAIRMAN

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Date: February 18, 1972

To: MONTANA CONSTITUTIONAL CONVENTION

From: Revenue and Finance Committee

Ladies and Gentlemen:

The Revenue and Finance Committee submits herewith a proposed new Revenue and Finance Article which combines Articles XII, XIII and XXI of the present Constitution. The proposed article is intended to replace all sections of those articles, removing some provisions entirely, condensed the language of other provisions, retaining the intent of some sections, and adding new revenue sections.

The members of this committee, by signing the majority report, do not necessarily endorse each and every statement contained therein; and minority reports on various sections are also presented in this report.

The committee utilized the testimony of many witnesses. It is also indebted to the delegates for the many proposals in the revenue and finance area.

The committee wishes to express its thanks to Roger A. Barber, its Research Analyst; Dennis Burr, its consultant from the Department of Revenue; Karen Holliday, its secretary; and Randall Gray, Blake Johnson and Edwin Shannon, its Student Interns.

/s/ Sterling Rygg
Chairman

/s/ Maurice Driscoll
Vice Chairman

INTRODUCTION

The delegates to the Constitutional Convention are charged with rewriting the basic governmental structure and legal document of the State. The guiding principle during these deliberations has been a clean, simple document, limited to those basic principles and doctrines important enough to be frozen in Constitutional ice. Some committees, of necessity, had to come up with Constitutional articles. The Executive, Legislative and Judiciary Committees had to establish the basic framework for those three traditional branches of government. The Bill of Rights Committee had to develop certain fundamental principles and rights guaranteed to the people by their government.

The Revenue and Finance Committee approached its task with a different attitude. From a pure, theoretical viewpoint, the Constitution does not have to say a thing about taxation. That suggestion was made to the committee on at least two occasions. The reason is simple--the power to tax is an inherent power of the state, a power already possessed by the state without any grant of authority. Anything in a state Constitution on the subject of taxation is either redundant (reiterating a power already possessed by the state) or restrictive.

The majority report contains provisions of both philosophies. Some of the proposed sections simply state a power already possessed by the legislature--but repeated because of its importance to proper governmental operation or to the protection of the people. Other sections were specifically included to restrict the state's taxing or revenue powers.

The majority report reflects the committee's approach to its deliberations. Assigned three articles from the present Constitution--containing 42 sections--the committee recommends a condensed, single article of only 14 sections. Naturally, that means the committee eliminated or abandoned many sections in the present Constitution. For the convenience of the convention, the following enumeration shows what happened to those sections and why.

ARTICLE XII

Section 1. Eliminated. The state already possesses the power to levy particular kinds of taxes and license fees. The Constitution does not need to list those tax programs. The committee also did not feel that the Constitution should require taxation of all property.

For 80 years, the Constitution required taxation of all property. That mandate was difficult to live up to. The reporting procedure utilized for taxation of household property did not insure its complete taxation. Stocks and bonds frequently escaped

detection. The requirement of complete property taxation often encouraged dishonesty. The proposed article removes those problems--the legislature shall decide what property to tax and how to tax it. The legislature may decide that other types of taxation are more equitable and may reach kinds of property not touched by the property tax now.

Section 1a. Eliminated. Again, it is unnecessary to specify particular tax programs in the Constitution.

The provision earmarking income tax revenues for education and the general fund was removed for two reasons: 1) the committee wanted to avoid earmarking of funds as much as possible, and 2) the present language does not specify how much of the income tax revenues should go to education. By statute, 25 percent of these funds are presently dedicated, but technically, one dollar of the total income tax revenues would satisfy the Section 1a requirement. The committee felt the earmark had little force and was best eliminated.

Section 1b. Proposed section 6, with modifications, covers this section.

Section 2. Proposed section 5, with some changes, covers tax exempt property.

Section 3. Eliminated. The legislature should determine methods and procedures for taxing minerals. The committee heard conflicting testimony on the most equitable kind of tax to impose on metal mines, coal, oil and gas. Therefore, the decision should be left to legislative determination.

The committee recommends that the legislature give serious consideration to retention of the present statute providing for a net proceeds tax in lieu of the property tax on minerals in place. The legislature has done a good job of developing fair and equitable taxation of Montana minerals. It should be given full discretion to continue that program. The committee also recognizes the importance of legislative flexibility to meet the needs of changing times. If the legislature should decide that net proceeds are no longer the best method of mineral taxation, it should also remember the dislocation to local government revenues that would be caused by such a change.

Section 4. Eliminated. The prohibition on state aid to local governments is no longer justified. If the legislature wants to assist local governments, it should be free to do so and should not have to resort to subterfuge. The legislature should not have to create artificial loopholes, like the license fee system, to feed tax money to local government units. That license fee exception to the present state aid prohibition has caused trouble for the legislature when it tries to establish a license system; and troubles the courts when they must decide whether the revenue program is really a license system. The legislature has

also tried to get around the prohibition by creating programs of a "state governmental nature" such as the recent sewerage treatment aid program. That concept is a nebulous creature, and may thwart otherwise acceptable programs that fail to attain the proper state government stature.

The question of local government taxing authority is covered by the Local Government Committee. Nothing in the proposed revenue article is meant to restrict the legislature from granting taxing authority to local governments or of local governments from having such authority.

Section 5. The question of local government taxing powers is covered by the Local Government Committee. The second clause of this section is covered by proposed section 4.

Section 6. The intent of this section is covered by proposed section 2.

Section 7. The intent of this section is covered by proposed section 2.

Section 8. This guarantee is already established in the Federal Constitution, the supreme law of the land. Repetition of the guarantee at the state level is unnecessary.

Section 9. The two-mill limitation on state property taxes has been removed, primarily in an effort to comply with the Serrano school finance case from California. Although Serrano is not yet the law in the United States, and a similar decision has not been upheld in Montana courts, the Constitution is not a document for today only. The framers of this Constitution must be forward-looking and future-oriented.

The committee has heard conflicting testimony on the Serrano case and its application to the Montana situation. But the overwhelming weight of the evidence indicates its applicability. The committee simply had to face the possibility that Montana may have to levy a statewide property tax for educational purposes. That possibility was strengthened by the acceptance of the Serrano doctrine in Texas, Minnesota and New Jersey.

The committee was also concerned with the present use of the two-mill statewide property tax levy. The levy is used now as a backstop measure, imposed to bring in additional revenues when other methods fail. Quite often the decision to impose the levy is made for political, rather than economic, reasons.

The intents of the four-mill livestock levy is covered in proposed section 14.

Section 10. Eliminated. The intent of this section is covered, in general terms, in proposed section 12. Specifics are better left to the legislature, however.

Section 11. The first sentence is now proposed section 1. The uniformity philosophy in the second sentence was eliminated, primarily because uniformity of taxation is already required of the states through the 14th Amendment to the United States Constitution. The proviso also unnecessarily thwarts taxation programs, and has caused considerable consternation in other states. The Pennsylvania Supreme Court invalidated an inheritance tax program as violative of the uniformity provision. The Illinois uniformity clause was interpreted to prohibit a graduated income tax in that state.

Section 12. The "balanced budget" philosophy of this section is retained in proposed section C.

Section 13. Eliminated. The intent of this section is covered, in general terms, in proposed section 12. Details should be left to the legislature.

Section 14. Eliminated. The intent of this section is covered, in general terms, in proposed section 12. The legislature should establish the procedures by statute.

Section 15. Property taxation procedures are covered in proposed section 3--the state is now responsible for appraisal, assessment and equalization. Provisions concerning the structure of the property taxation system are better left to the legislature. Only that body can judge the needs of future taxpayers, and establish procedures that best suit those needs. It is unnecessary to freeze such administrative detail in a Constitution.

The committee does recommend a comprehensive review procedure for Montana taxpayers in proposed section 7. The recommendation establishes an appeal board separate and distinct from the tax administrative agencies. Because this independent appeal program is new to Montana, the committee's recommendation on that part of the state tax structure is relatively detailed.

Section 16. Proposed section 3 covers the assessment of property. The detail in this section is no longer necessary.

Section 17. Eliminated. The philosophy of the proposed article on revenue and finance is faith in the long-term judgement of future legislatures in matters of taxation and finance. The legislature should enjoy the flexibility necessary to create and develop equitable tax programs. That assembly should not be limited to particular approaches in raising revenue. The proposed article does not require taxation of all property--and consequently, makes no attempt to define that term.

Section 18. Eliminated. The legislative assembly already possesses that power.

ARTICLE XIII

Section 1. The "lending of credit" provisc is essentially a public purpose question. The Montana Supreme Court has equated the two concepts in its numerous interpretations of the "lending of credit" clause. Public purpose is covered in proposed section 1. The remainder of this section is concerned with government ownership of corporate stocks and bonds. That concept is an investment question, which is covered in proposed section 13.

Section 2. The new state indebtedness provision is covered in proposed section 8.

Section 3. The intent of this section is covered in proposed section 11.

Section 4. Eliminated. The committee felt that the legislature should not be bound in this way. After much consideration by the committee, it was concluded that if the state were permitted to back local government bonds with its (the state's) full faith and credit, the interest rates on those bonds could be lower.

Section 5. Local government indebtedness is covered by proposed section 10.

Section 6. Local government indebtedness is covered by proposed section 10.

ARTICLE XXI

The committee is proposing an entirely new section on investment of public funds, a short provision that completely replaces all of Article XXI. That article is outdated and obsolete. In fact, it has been largely useless since its inclusion in the Constitution in 1924. As originally established; Article XXI created three permanent revenue funds for the state to be funded by money grants of at least $250. These three funds have never existed, principally because the interest from the funds could not be distributed until the principal reached ridiculously high amounts. ($100 million and $500 million). Benefactors to the state simply were not willing to tie their money up in that way. Because of the nonexistent nature of those three funds, all of the sections that refer to them in Article XXI are useless.

If the public school fund and other land grant funds had not been added to the Trust and Legacy Fund in 1938, the entire article would presently have no affect. But that incorporation did give the article heretofore invisible life. Treatment of the public school fund is already taken care of in Article XI and the Enabling Act, however, so the committee saw no reason to retain the Constitutional status of an otherwise hollow Trust and Legacy Fund. The fund will not be eliminated entirely by its removal from the Constitution. It will still exist by statute.

MAJORITY REPORT

BE IT PROPOSED BY THE REVENUE AND FINANCE COMMITTEE:

That there be a new Article on Revenue and Finance to read as follows:

ARTICLE __

REVENUE AND FINANCE

Section 1. PUBLIC PURPOSE. Taxes shall be levied by general laws for public purposes.

Section 2. SURRENDER CLAUSE. The power of taxation shall never be surrendered, suspended, or contracted away.

Section 3. PROPERTY TAX ADMINISTRATION. Property which is to be taxed shall be appraised, assessed and equalized by the state in the manner prescribed by law.

Section 4. EQUAL VALUATION. The assessed valuation of property to be taxed in any taxing jurisdiction shall be the same valuation as the valuation for state and county purposes.

Section 5. PROPERTY TAX EXEMPTIONS. The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, and public libraries may be exempt from taxation, but any private interest in such property may be taxed separately. Property used exclusively for educational purposes, places for actual religious worship, hospitals and places of burial not used or held for private or corporate profit, institutions of purely public charity, may be exempt from taxation. Certain classes of property may be exempt from taxation. The Legislative Assembly may authorize creation of special improvement districts for capital improvements and the maintenance of capital improvements and the assessment of charges therefor, against tax exempt property directly benefited thereby.

Section 6. HIGHWAY EARMARK. Revenue, except from general sales and use taxes, from excise and license taxation on gasoline, fuel and other energy sources derived as a result of the propulsion of vehicles on public highways, and gross vehicle weight fees, shall be used solely for the payment of obligations incurred for construction, reconstruction, repair, operation, and maintenance of public highways, streets, roads and bridges and for county, city and town obligations on streets, roads and bridges, after the deduction of funds for enforcement of highway safety, driver education, tourist promotion and for administrative and collection costs as authorized by the legislative assem-

bly. By a three-fifths vote of the members of each house of the legislative assembly or by initiated measure approved by a majority of the electorate, such dedicated funds may be appropriated for other purposes.

Section 7. TAX APPEALS BOARD. The State Board of Tax Audit and Appeals shall be composed of five members, who shall be appointed by the governor, by and with the advice and consent of the Senate (Legislative Assembly). The Legislative Assembly shall divide the state into five districts as equal as practical in population of citizens and a member of such board shall be a resident of each of said districts. Each member shall hold his office for a term of five years, and until his successor shall have been appointed and qualified. In case of a vacancy, the person appointed to fill such vacancy shall hold office for the unexpired term in which the vacancy occurs. The first five members appointed to said board shall determine their respective terms by lot so that a term of office shall expire each succeeding year thereafter. Other qualifications, and salaries of members, shall be as provided by law; provided, however, that such members shall be so appointed that the board will not be composed of more than three members who are affiliated with the same political party or organization; provided, further, that each member shall devote his entire time to his duties of office and shall not hold any position of trust or profit, or engage in any other occupation or business, or serve on or under any committee of any political party or organization or candidate for office, and each member shall file with the Secretary of State, annually, a full, detailed and complete disclosure of his financial condition.

The State Board of Tax Audit and Appeals shall have appellate jurisdiction of individual appeals of all divisions of the administrative agency of the state carrying out the provisions of Section 3 of this article in order to insure that all taxes are administered according to law. Such individual appeals may be for the undervaluation and overvaluation and assessment of the appellant's property, or any other taxpayer's property. The board shall also have appellate jurisdiction of individual appeals of other divisions of State and local agencies related to license and excise taxation as may be provided the State by law. The board shall have the right to audit administration agency to ascertain instances of undervaluation or overvaluation of property to be taxed and publish its findings thereof. The Legislative Assembly may prescribe by law other duties to be performed by such Board and may provide that minor appeals, as defined by law, may be adjudicated by a single Board member in the county where the property is located, or the taxpaying citizen resides, or as the case may be.

Section 8. STATE INDEBTEDNESS. No state debt shall be created unless authorized by a three-fifths vote of the members of both houses of the Legislative Assembly. State debt cannot be created to cover deficits incurred when appropriations exceed

anticipated revenue during any budget period.

Section 9. BALANCED BUDGET. Appropriations by the Legislative Assembly shall not exceed anticipated revenues during any budget period.

Section 10. LOCAL GOVERNMENT INDEBTEDNESS. The legislative Assembly shall enact limits of indebtedness for subdivisions and districts of the state.

Section 11. USE OF LOAN PROCEEDS. All money borrowed by or on behalf of the state, or any subdivision or district of the state, shall be used only for the purpose or purposes specified in the law authorizing the loan.

Section 12. STRICT ACCOUNTABILITY. The Legislative Assembly shall enact the necessary laws to insure strict accountability of all revenues received and money spent by the state, subdivisions and districts thereof.

Section 13. INVESTMENT OF PUBLIC FUNDS. The legislative Assembly shall provide for a unified investment program for public funds and prescribe the rules and regulations therefor, including the supervision of investment of surplus funds of all subdivisions and districts of the state. The separate existence and identity of each and every fund involved as a part of the unified investment program shall be strictly maintained. An audit of the investment program shall be conducted at least annually and submitted to the Governor, Legislative Assembly and Chief Justice of the Supreme Court.

Section 14. AGRICULTURAL LEVIES. A special levy may be made on livestock and agricultural commodities for the purpose of disease control and indemnification, predator control, livestock inspection and protection, agricultural inspection and protection, livestock and agricultural commodity research and promotion.

/s/ Sterling Rygg
Chairman

/s/ Maurice Driscoll
Vice Chairman

/s/ William Artz

/s/ Russell McDonough

/s/ Earl Perthelson /s/ Mike McKeon

/s/ Dave Drum /s/ Roger Wagner

/s/ Noel Furlong

COMMENTS ON THE MAJORITY PROPOSAL

Section 1. Taxes shall be levied by general laws for public purposes.

COMMENTS

The broad language of proposed Section 1 is meant to replace the specific tax base provisions in present Article XII. The new section speaks only of "taxes". Provisions in the present Constitution specify particular kinds of revenue measures like property taxes, license fees, income taxes and mining taxation. That kind of enumeration is unnecessary; the state already possesses the power to levy any kind of tax it wants to. Enumeration of specific kinds of tax programs is also unwise. Courts, as a rule of construction, often hold that the listed measures or provisions are in lieu of all unlisted measures. In other words, the list tends to become exclusive.

The proposed section also establishes two well-recognized and important protections-requirements that taxes be established by general laws for public purposes only.

The requirement of general laws for public purposes extends to all tax programs, both state and local. Although those two requirements are already imposed on the state by the federal Constitution, repetition in the state document emphasizes their importance.

Section 2. The power of taxation shall never be surrendered, suspended, or contracted away.

COMMENTS

The shortened language of proposed Section 2 replaces the detailed provisions of present sections 6 and 7 in Article XII. The proposed section is frequently found in newer Constitutions, and is included as a reminder to the legislative assembly. The power of taxation is the most important power a governmental body possesses, and should not be lightly dismissed or bargained away.

The provision is not intended to prevent the state from delegating taxing powers to local governments. Nor is this section meant to deprive the legislature of its discretion to tax or not to tax or exempt classes of property.

Section 3. Property which is to be taxed shall be appraised, assessed, and equalized by the state in the manner prescribed by law.

COMMENTS

This new section is a progressive change from present taxation provisions. It embodies the committee's recommendation on property tax administration, which was previously set out in great detail in present Section 15 of Article XII. That old section, which established a two-tier system of assessment, equalization and review, would be replaced by a state-level system of appraisal, assessment and equalization. The details of that property tax system are not spelled out, again a departure from the specificity of present Section 15. The details of any tax administration system should be left to the legislature, which is best qualified to develop the most efficient, modern and fair system necessary for the needs of the day. Tax administration should be established by the legislature and administered by the executive branch of government, not by a Constitutional board which is immune to control by all three branches of government and immune from control by the people. A Constitutionally enshrined board is less answerable for its activities and is freer to ignore the mandates and directives of the legislative assembly.

Property appraisal and property tax assessment and equalization must be conducted by a state agency, however. The committee heard reams of testimony concerning the inadequate job of assessment and tax equalization in the state. The intent of the committee is that this change will establish qualified, professional appraisal and appraisal procedures, and will insure the equalization of taxes across the entire state.

Hopefully, the inequalities that presently exist within taxing districts and between taxing districts can be avoided if accountability is in some state agency. Testimony also leads the committee to believe that pressures and temptations for undervaluation and under-assessment presently exist at the local level. The current operation of the school foundation program encourages undervaluation of local property. When such undervaluation exists, the state pours in more money for educational purposes.

Hand-in-hand with the concept of a professionalized, responsive tax administrator is the need for independent review of the administrator's actions. The committee has created the machinery for that review function in its proposed section 7. That proposal is a sharp change from the present Constitutional tax administration structure which combines both the administrative and adjudicating functions in one agency. True equity requires the separation of those responsibilities.

The need for statewide administration of the property tax was probably brought into sharpest focus by the torrent of testimony on Serrano v. Priest. If the state has to go into funding of governmental programs, particularly education, through a

statewide property tax, the need for efficient, equitable appraisal and assessment will be intensified.

> Section 4. The assessed valuation of property to be taxed in any taxing jurisdiction shall be the same valuation as the valuation for state and county purposes.

COMMENTS

The proposed section is similar in language and intent to present Section 6 of Article XII. The provision guarantees that property will be assessed at the same value, despite the government that is levying the tax. In other words, property will be taxed at the same assessment for state, county or school district purposes. A school district cannot assess at a higher value. Such "equal" valuation between local governments is so important, the committee feels, that it should be guaranteed in the Constitution.

> Section 5. The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, and public libraries may be exempt from taxation, but any private interest in such property may be taxed separately. Property used exclusively for educational purposes, places for actual religious worship, hospitals and places of burial not used or held for private or corporate profit, institutions of purely public charity, may be exempt from taxation. Certain classes of property may be exempt from taxation. The legislative assembly may authorize creation of special improvement districts for capital improvements and the maintenance of capital improvements and the assessment of charges therefor, against tax exempt property directly benefited thereby.

COMMENTS

The proposed section on property tax exemptions is different in at least four ways. Most of the present property exemptions are retained--agricultural and horticultural societies and mortgages are deleted. Those classes of property could be exempt from taxation if the Legislature so required. Deletion from the Constitutional listing does not remove them from potential tax exemption. The new section permits taxation of <u>private</u> interests in government-owned property, closing a loophole in the present Constitution. The proposed provision also permits assessment of special improvement district charges on tax-exempt property. The Constitutionality of such charges is presently in doubt, although many such assessments are paid annually on tax-exempt property.

The new provision simply legitimatizes that practice.

The most important change in the proposed section is the non-exclusive nature of the tax exempt list. Unlike the present Constitution, the proposed article on Revenue and Finance does not require that all property be taxed. The proposed provisions are silent on the subject, leaving the scope and nature of taxation programs up to the Legislature. Property may be taxed or may be exempted by the Legislature. The permissible list of exemptions is not exclusive. The legislature may add to the list.

> Section 6. Revenue, except from general sales and use taxes, from excise and license taxation on gasoline, fuel and other energy sources derived as a result of the propulsion of vehicles on public highways, and gross vehicle weight fees, shall be used solely for the payment of obligations incurred for construction, reconstruction, repair, operation, and maintenance of public highways, streets, roads and bridges and for county, city and town obligations on streets, roads and bridges, after the deduction of funds for enforcement of highway safety, drivers education, tourist promotion and for administrative and collection costs as authorized by the legislative assembly. By a three-fifths vote of the members of each house of the legislative assembly or by initiated measure approved by a majority of the electorate, such dedicated funds may be appropriated for other purposes.

COMMENTS

The proposed section on earmarking of funds for highway purposes is similar to present Section 16 of Article XII in most respects. Three substantial changes have been made in the scope and effect of that old section, however:

1.) The amount of money earmarked for the highway fund has been changed. The old section dedicated funds from fuel taxes, gross vehicle weight fees registration fees and fees on the sale of new cars. The proposed section only earmarks gasoline and fuel taxes, and gross vehicle weight fees.

2.) The permissible uses of highway earmarked funds have been expanded to include local government road and street systems, highway safety programs and driver education programs. The removal of the state aid to local government restriction insures that these road funds can be used to finance local government road and street systems. The legislature will now be free to make direct grants to local governments instead of developing complicated bookkeeping devices to get around the prohibition.

.) The funds are not dedicated from now al infinitum, or until repeal by amendment or by another Constitutional Convention. The proposed section permits diversion of the earmarked funds to other purposes if each house of the Legislative Assembly by a three-fifths majority, approves such expenditure. In other words, the primary responsibility for review, assessment . . . and eventually, allocation . . . of highway funds rests with the Legislature. That body is free to change the earmark.

The committee felt that retention of the anti-diversion amendment was necessary at the present time. The amendment is a recent addition to the Constitution, overwhelmingly approved by the voters in 1956. A large amount of Federal matching money is still pouring into the state to finance the interstate system and the local primary and secondary highway systems. Extensive testimony indicates its exclusion may well jeopardize the final product of this Convention.

The committee was also concerned with the proper use of gasoline and motor fuel tax revenues. These taxing programs were originally created to benefit the state highway system. The committee felt that original purpose should be maintained. The committee realizes that the time may come when highway funds are no longer needed, at least not at the level of current programs. In that case the gasoline and fuel taxes should perhaps be allowed to diminish. The committee would hate to create another situation like the cigarette tax, which was originally set up to fund programs and benefits for veterans. That tax has now been moved to fund the Long Range Building Program and the General Fund. In an effort to encourage the elimination of the gasoline and motor fuel taxes when their usefulness is up, the committee has tried to strengthen legislative control and allocation over highway funds.

Section 7. The State Board of Tax Audit and Appeals shall be composed of five members, who shall be appointed by the governor, by and with the advice and consent of the Senate (Legislative Assembly). The legislative assembly shall divide the state into five districts as equal as practical in population of citizens and a member of such board shall be a resident of each of said districts. Each member shall hold his office for a term of five years, and until his successor shall have been appointed and qualified. In case of a vacancy, the person appointed to fill such vacancy shall hold office for the unexpired term in which the vacancy occurs. The first five members appointed to said board shall determine their respective terms by lot so that a term of office shall expire each succeeding year thereafter. Other qualifications, and salaries of members, shall be as provided by law; provided, however, that such members shall be so appointed that the board will not be composed of more than three

members who are affiliated with the same political party or organization; provided, further, that each member shall devote his entire time to his duties of office and shall not hold any position of trust or profit, or engage in any other occupation or business, or serve on or under any committee of any political party or organization or candidate for office, and each member shall file with the Secretary of State, annually, a full, detailed and complete disclosure of his financial condition.

The State Board of Tax Audit and Appeals shall have appellate jurisdiction of individual appeals of all divisions of the administrative agency of the state carrying out the provisions of Section 3 of this article in order to insure that all taxes are administered according to law. Such individual appeals may be for the undervaluation and overvaluation and assessment of the appellant's property, or any other taxpayer's property. The board shall also have appellate jurisdiction of individual appeals of other divisions of state and local agencies related to license and excise taxation as may be provided by law. The board shall have the right to audit the state administration agency to ascertain instances of undervaluation or overvaluation of property to be taxed and publish its findings thereof. The legislative assembly may prescribe by law other duties to be performed by such board and may provide that minor appeals, as defined by law, may be adjudicated by a single board member in the county where the property is located, or the taxpaying citizen resides, or as the case may be.

COMMENT

The committee realizes the importance of a short document. The introduction to this report emphasized the committee's concern for brevity and clarity. But this proposed Section 7 creates a new protection for the Montana taxpayer, an independent tax appeal board. Because the provision provides a new right, the structure, function and jurisdiction of the board are spelled out in some detail.

The present section is proposed for a new Constitution because it establishes a guarantee never provided for Montana taxpayers. Under the present tax administration program, the same governmental bodies (County Boards of Equalization and State Board of Equalization) that establish revenue policies and procedures also sit in judgment on the implementation of those procedures. Overwhelming testimony to the committee indicates that the procedure does not guarantee an independent, non-partial, objective review of tax decisions. The Montana taxpayer needs some avenue of recourse, besides the tax administrator or the courts, to evaluate his tax treatment. The proposed

section accomplishes that objective by establishing an independent review procedure.

The Constitution should not specify details of tax administration. Present Section 15 of Article XII of the Montana Constitution creates an elaborate method of property tax administration for the state, and demonstrates the futility of including such detail in a Constitution. When the Constitution was written in 1889, property taxes were the sole source of revenue for the state. But like the framers of 1889, this convention cannot foresee all the changes in the state's revenue structure. The details of that revenue administration should be left to the legislature, which can evaluate changes and create the best structure to administer revenue programs.

> Section 8. No state debt shall be created unless authorized by a three-fifths vote of the members of both houses of the legislative assembly. State debt cannot be created to cover deficits incurred when appropriations exceed anticipated revenue during any budget period.

COMMENTS

This section replaces the present state debt limitation established by Article XIII, Section 2. That old section created a $100,000 debt limit for the state, with additional indebtedness as authorized by the electorate. The proposed section leaves the question of indebtedness entirely up to the legislature, requiring a three-fifths majority of the members-elect to create debt. The extraordinary majority requirement should insure careful consideration of any indebtedness proposal, and should prevent unnecessary programs.

The committee felt that some debt restriction should be placed on the legislature. A fixed dollar limit, like the present $100,000-ceiling, is unrealistic and only encourages circumvention.

The committee does not possess the ability to forecast the economic future and fiscal capacity of the state. The committee was concerned with the problems involved in establishing a limitation that fluctuates with property valuations or state revenues. It feels the proposed provision will insure the viability of the Constitution for many generations.

The second sentence of this proposed section prevents the legislature from creating debt to balance the budget. While debt may be a viable tool in cases of catastrophy or extraordinary circumstances, the legislative assembly should not be free to thwart the "balance budget" intent of proposed Section 9.

Section 9. Appropriations by the legislative assembly shall not exceed anticipated revenues during any budget period.

COMMENTS

This proposed section is similar in effect to present Section 12 of Article XII. It requires the state to operate under a "balanced budget" philosophy, but establishes that doctrine in much simpler language. Although the state may have trouble operating in the black, since it can only estimate the amount of revenues coming in any budget period, this section requires the legislative assembly to stay within those estimated limits when it appropriates funds.

Section 10. The legislative assembly shall enact limits of indebtedness for subdivisions and districts of the state.

COMMENTS

This proposed section leaves the question of local government indebtedness, and limits on that indebtedness, up to the legislative assembly. This broad grant of authority is utilized because of the uncertain nature of any fixed debt limitation.

The legislature should be free to encourage economic development in local government units. The history of the last 80 years indicates that the legislature has been frugal in empowering local government indebtedness. The proposed provisions restores that control. The proposed section would leave the legislature free, if it so decided, to pledge the full faith and credit of local government units to back indebtedness. Such a pledge should result in lower interest rates and a savings to the people of Montana.

Section 11. All money borrowed by or on behalf of the state, or any subdivision or district of the state, shall be used only for the purpose or purposes specified in the law authorizing the loan.

COMMENTS

This section is practically identical to Article XIII, Section 3. The section guarantees accountability and proper management of borrowed funds, and should prevent misuse or diversion of that money. The section is self-explanatory and is an important guarantee for the people.

Section 12. The legislative assembly shall enact the necessary laws to insure strict accountability of all revenues received and money spent by the state, subdivisions and districts thereof.

COMMENTS

The proposed section, though broad in scope, covers the same ground as the present detailed sections 13 and 14 of Article XII. It also conveys the intent of "specific appropriations" required by Section 10. The importance of accountability for state revenues is not diminished--indeed, that rationale is given Constitutional status in this proposed section. But the details of accounting, procedures, deposits, cash flow, reporting requirements, etc., have to be left to the legislative assembly. The Constitution simply cannot anticipate changes in the accounting and monetary fields. The computerized techniques presently utilized by the state were beyond the wildest dreams of the 1889 framers. The need for detailed and consolidated reporting information also was not anticipated. The present Constitutional provisions on deposits, cash flow and reporting are not adhered to.

The committee recommends that the legislature take immediate steps to establish unified accounting procedures for all governmental units in the state. Though statutory in nature, the committee feels the importance of such a program is essential to proper accounting and data functions.

Section 13. The legislative assembly shall provide for a unified investment program for public funds and prescribe the rules and regulations therefor, including the supervision of investment of surplus funds of all subdivisions and districts of the state. The separate existence and identity of each and every fund involved as a part of the unified investment program shall be strictly maintained. An audit of the investment program shall be conducted at least annually and submitted to the governor, legislative assembly and chief justice of the supreme court.

COMMENT

The proposed section on investments replaces all of Article XXI in the present Constitution. Most of the provisions in that article are obsolete--in fact, if the public school fund had not been added to the Montana Trust and Legacy Fund in 1938, the article would have no effect whatever. The proposed section stresses the importance of a unified investment program for

public funds. Such a program has been sought in Montana since 1924, and has only recently been accomplished through Executive Reorganization. The committee feels that the importance of unity, professional treatment and supervision of public fund investments should be stressed at the Constitutional level. Because public money is such an important trust for the people of Montana, the investment program should be audited at least annually.

The sentence on separate identity of funds in the public fund investment program was added to insure proper distribution of interest to the individual funds. Although public funds should be invested as a unit to insure a larger return, the interest from that unified program should be distributed on a pro rata basis, depending on the size of the individual funds. The "separate fund" sentence should insure that distribution.

The regulation and limitation of the investment program, and the administrative structure of the investment program, is left up to the legislative assembly.

At least two restrictions on the investment program will remain in force in the Constitution. These provisions, in Article XI and The Enabling Act, deal with land grant money.

The legislature is best equipped to make decisions concerning investment opportunities for state money. The obsolete nature of Article XXI illustrates the futility of trying to prescribe an investment program and investment details at the Constitutional level. The scope of the legislature's supervision should also include surplus funds at the local level. Although the legislature may well leave the handling and investment of such funds in the hands of local governments, its supervisory powers will insure their careful handling and treatment.

> Section 14. A special levy may be made on livestock and agricultural commodities for the purpose of disease control and indemnification, predator control, livestock inspection and protection, agricultural inspection and protection, livestock and agricultural commodity research and promotion.

COMMENTS

The proposed language retains the intent of Section 9 regarding livestock mill levies, and expands the permissible list of industries and uses for such a statewide levy. The levies are not a pure earmark. They are more of a bookkeeping and accounting procedure.

The provision, in explicit terms similar to present Section 9, is no longer necessary. The uniformity clause has been

removed from the proposed Article; and the statewide property tax limit has also been deleted. But the importance of agriculture to the Montana economy should not be underestimated--in fact, it should be emphasized.

The committee also thought it should encourage taxpayers who are willing to bear the burden of a tax to improve the economic future of their industry.

COMMITTEE ON REVENUE AND FINANCE

MINORITY PROPOSAL 1

BE IT PROPOSED:

That the following be substituted for Section 5 of the Majority Proposal entitled "Property Tax Exemptions":

The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, and public libraries may be exempt from taxation, but any private interest in such property may be taxed separately.

Property used exclusively for educational purposes; places for actual religious worship; hospitals and places of burial not used or held for private or corporate profit; institutions of purely public charity, household goods and furniture, wearing apparel, and other personal property used by the owner for personal and domestic purposes; cash and accounts receivable; dwellings and personal property of totally serviceconnected disabled veterans; dwellings used for residential purposes; evidences of debt secured by mortgages of record upon real or personal property in the state of Montana; the stocks of any company or corporation when the property of such company or corporation represented by such stocks is within the state and has been taxed, may be exempt from taxation.

The legislative assembly may authorize creation of special improvement districts for capital improvements, maintenance of capital improvements and the assessment of charges therefor, against tax exempt property directly benefited thereby.

/s/ Mike McKeon /s/ Wm. H. Artz

/s/ M. Driscoll

COMMENTS

The minority report is in complete disagreement with all references in the rationale of the majority report stating that all property may be exempted from tax by the legislature. We have faith in the legislative process but are of the opinion that this

is "opening the door too wide." In our opinion, as upheld by court decisions, only the items of property listed above are eligible to tax exemption by the legislative process.

We agree that it is easier to enforce collection of taxes on some property than it is on other property but cannot consider this as a sufficient reason for removal of this type of property from the tax rolls. The Internal Revenue Service has developed procedures for ferreting out income from cash transactions. We submit that the tax department of Montana should be able to develop adequate techniques despite the fact that local government authorities have been negligent for many years.

We also submit that tax equity requires that if certain income producing property is taxed, then all income producing property should be taxed. It is not equitable to tax $10,000 of equipment which produces income subject to income tax and at the same time eliminate $10,000 of investments (e.g. tax-exempt securities) the income of which is not subject to income taxes.

We also submit that if the legislature should acquiesce to pressures to eliminate stock and bond investments from property taxation because of the so-called problems of assessment a severe injustice will be imposed on lower income citizens to the benefit of more affluent citizens. We cannot imagine the delegates of the Convention condoning such an inequity.

We justify the addition of the following items to the permissive list:

1) Household goods and furniture, wearing apparel, and other personal property used by the owner for personal and domestic purposes:

   a. Recommended by Delegate Felt proposal #161.

   b. Testimony received indicated that costs of collections are in many instances equal to tax received.

   c. Property does not produce income.

2) Cash and accounts receivable.

   a. Recommended by Delegate Felt proposal #161.

   b. Not necessarily income producing.

   c. We agree that the term accounts receivable is very broad but have confidence that the legislative assembly in its wisdom will develop legislation that will not violate the underlying principle that all income producing property should be subject to property tax if any income producing property is subject to property tax.

3) Dwelling and personal property of totally serviceconnected disabled veterans.

a. The committee had testimony that there are approximately 99,000 veterans of which approximately 387 would be eligible for this tax relief.

b. We submit that this tax exemption is certainly justified when the mental picture of what total disability is considered.

4) Dwellings used for residential purposes.

a. Dwellings do not produce income.

b. It is realized that the elimination of dwellings from the tax rolls could cause a terrific upheaval in revenues produced from property taxes on the local level. This is a decision which has been left to the judgment of the legislature by the permissive nature of this section.

5) Evidences of debt secured by mortgages of record upon real or personal property in the state of Montana.

a. Eliminates double taxation.

b. Contained in Article XII, Section 2, of current Constitution.

6) The stocks of any company or corporation when the property of such company or corporation represented by such stocks is within the state and has been taxed.

a. Eliminates double taxation.

b. Contained in Article XII, Section 17, of current Constitution.

COMMITTEE ON REVENUE AND FINANCE

MINORITY PROPOSAL 2

BE IT PROPOSED:

That the following be substituted for Section 13 of the Majority Proposal entitled "Investment of Public Funds":

> The legislative assembly shall provide for a unified investment program for public funds and prescribe the rules and regulations therefor, including the supervision of investment of surplus funds of all subdivisions and districts of the state. The separate existence and identity of each and every fund involved as a part of the unified investment program shall be strictly maintained. With the exception of monies contributed by individuals to retirement funds, no public funds shall be invested in private corporate capital stock.

/s/ William Artz

/s/ Mike McKeon

/s/ Maurice Driscoll

COMMENTS

We submit that criteria for investment of public trust funds should be more stringent than the criteria for investment of private funds.

We believe that priorities should be in this order:

1) Security.

2) Funds should be invested in Montana as much as possible.

3) Return on investment.

Much of the testimony presented indicated that emphasis was being placed on return on investment rather than security. As an

example: "You don't find the big red apples next to the trunk of the tree--you find them near the end of the limb." We are opposed to gambling with state funds and taking a chance that the limb might break.

Testimony has been offered that the stock market will act as an offset to inflation. We offer that money invested at 5 3/4% for 12 years can double.

The following communication was received from a large organized group of citizens: "We confess a lack of expertise in suggesting adequate safeguards in the Constitution to govern the legislature on drafting liberalized investment laws. We do see danger inherent in such liberalized laws and hope that committee deliberations and convention debate will develop 'behind the record' guidelines for the legislature to follow in liberalizing the investment laws regulating the investment of public funds."

We feel that the pressures exerted on the committee to permit investment in the stock market will be continued indefinitely unless our restriction is incorporated in the Constitution. Therefore, with a deep concern for the safety of present and future public trust funds, we earnestly recommend that favorable consideration by the delegates be given to this minority report.

We also wish to bring to your attention that ownership of voting stock of a private corporation constitutes government ownership of private property--a form of socialism. We also question the propriety of the state voting the stock of a private corporation for a variety of obvious reasons. But foremost is the risk involved in trusting our state funds to the caprice of volatile market. It is with these considerations in mind that we reject the majority proposal and submit the above minority proposal.

APPENDIX A

ROLL CALL VOTE ON MAJORITY PROPOSAL

MEMBER / SECTION	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	TOTAL Y	TOTAL N	TOTAL A
Artz	Y	Y	Y	Y	N	N	Y	Y	Y	Y	Y	Y	N	Y	N	11	4	0
Berthelson	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	15	0	0
Drum	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	15	0	0
Furlong	Y	Y	Y	Y	N	Y	N	Y	Y	Y	Y	Y	Y	N	N	11	4	0
McDonough	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	14	1	0
McKeon	Y	Y	Y	Y	N	N	Y	Y	Y	Y	Y	Y	N	N	N	10	5	0
Wagner	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	15	0	0
Rygg	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	N	N	12	3	0
Driscoll	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	N	Y	N	12	3	0
TOTAL Yea	9	9	9	9	5	7	7	9	9	9	9	9	6	6	3			
Nay	0	0	0	0	4	2	2	0	0	0	0	0	3	3	6			
Absent	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			

APPENDIX B

PROPOSALS CONSIDERED BY COMMITTEE

The following delegate proposals were examined and considered by the Revenue and Finance Committee during its deliberations.

	Number of of Proposal	Chief Sponsor	Subject Matter	Disposition
1.	11	Virginia Blend	No property taxes for public schools	Indefinitely Tabled
2.	16	Virginia Blend	Earmarking	Rejected
3.	23	Virginia Blend	No property taxes for welfare	Indefinitely Tabled
4.	35	Mae Nan Robinson	Preferential Taxation	Adopted in Part
5.	37	Donald Foster	Earmarking	Rejected
6.	46	Mike McKeon	School Financing	Adopted in Part
7.	80	John Toole	Anti-Diversion Amendment	Adopted in Part
8.	109	Robert Kelleher	$1 of income tax to party of choice	Rejected
9.	66	John Schiltz	Tax exemptions on Motor Vehicles	Adopted in Part
10.	72	Thomas Ask	Repeal of Section 3, Article XII	Adopted
11.	119	Magnus Aasheim	Earmarking	Rejected
12.	161	James Felt	New Taxation Article	Adopted in Part
13.	173	Jerome Loendorf	Tax Exemptions for Disabled Veterans	Minority Report

APPENDIX C

WITNESSES HEARD BY COMMITTEE

1. Don Gibson - County Commissioner - Glendive - County debt limitations.

2. Burt Burwitz - Association of County Commissioners - White Sulphur Springs - County debt limitations.

3. Doyle Saxby - Director, Department of Administration - Helena - Montana Trust and Legacy Fund.

4. James R. Howeth - Investment Officer, Board of Investments - Helena - Montana Trust and Legacy Fund.

5. Paul Caruso - Chairman, Board of Investments - Helena - Montana Trust and Legacy Fund.

6. Ted Schwinden - Commissioner, Department of Lands - Helena - Montana Trust and Legacy Fund.

7. James Carden - Industrial Accident Board - Helena Investment of funds.

8. Alton P. Hendrickson - Executive Secretary, Teachers Retirement System - Helena - Investment of funds.

9. Lawrence Nachtsheim - Public Employees Retirement System - Helena - Investment of funds.

10. William Scribner - Montana Automobile Dealers Association - Helena - Auto license fee in lieu of property taxation.

11. P. J. Gilfeather - State senator - Great Falls - Revenue and Finance in general.

12. A. W. Kamhoot - Delegate - Forsyth - Taxation of mines and mineral interests.

13. Dan Mizner - Montana League of Cities and Towns - Helena - Local government taxation provisions.

14. Ed Quinn - Anaconda Company - Butte - Taxation of mines and mineral interests.

15. P. L. MacDonald - Anaconda Company - Butte - Taxation of mines and mineral interests.

16. William Diehl - Economist - Helena - Revenue and finance in general.

17. Jean Anderson - Montana League of Women Voters - Billings - State aid to local governments.

18. S. Keith Anderson - Montana Taxpayers Association - Helena - Revenue and finance in general.

19. Margaret Warden - delegate - Great Falls - Financing the Long Range Building Program.

20. Michael G. Billings - Superintendent of Public Instruction Office - Helena - Revenue and finance provisions as they effect education.

21. Dean Zinnecker - Association of County Commissioners - Helena - County board of equalization and county debt limitations.

22. Barrett Ward - President, Montana County Assessors Association - Sheridan County - County Assessors.

23. Chadwick Smith - Montana School Boards Association - Helena - School finance.

24. Lloyd A. Markell - Montana Education Association - Helena - School finance.

25. Keith Colbo - Director, Department of Revenue - Helena - Revenue and finance in general.

26. George B. Schotte - Montana Automobile Association - Helena - Anti-diversion provision.

27. Jack Rehberg - Secretary, Highway Users Federation - Billings - Anti-diversion provision.

28. J. Morley Cooper - Chairman, State Board of Equalization - Helena - State Board of Equalization.

29. John Alley - Member, State Board of Equalization - Helena - State Board of Equalization.

30. Ray Wayrynen - Member, State Board of Equalization - Helena - State Board of Equalization.

31. James T. Harrison - Chief Justice, Montana Supreme Court - Helena - Montana Trust and Legacy Fund.

32. Mons Teigen - Montana Stockgrowers Association - Helena - Four-mill livestock levy.

33. Ralph Armstrong - County Commissioner - Bozeman - Property tax exemptions.

34. Bill Cheney - Executive officer, Livestock Commission -

Helena - Four-mill livestock levy.

35. Torrey B. Johnson - Delegate - Busby - Four-mill livestock levy.

36. Cedor B. Aronow - Shelby - Delegate - Net Proceeds tax.

37. Don Roberts - Cardinal Petroleum Co. - Billings - Net Proceeds Tax.

38. Lee McCartney - High Crest Oils, Inc. - Havre - Net Proceeds Tax.

39. Clay McCartney - Chinook - Businessman - Net Proceeds Tax.

40. Ward Shanahan - Attorney representing Carroll College Board of Trustees - Helena - Article XII.

41. William C. Hollenbaugh - Professor of Forestry, University of Montana - Missoula - Property taxation.

42. Representative Robert Watt - Montana Student Presidents' Association - Missoula - General Taxation.

43. Vern Miller - State Board of Equalization - Helena - Railroad Land Holdings.

44. G. Dean Reed - Deputy Legislative Auditor - Helena - Functions of the Office of Legislative Auditor.

45. John Toole - Delegate - Missoula - Proposal #80 - Amendment to Anti-diversion Provision.

46. Virginia Blend - Delegate - Great Falls - Proposal #16 - Prohibition of Earmarking.

47. Jim Stephens - President, Montana Grain Growers Association - Dutton - Article XII, section 9.

48. Donald Foster - Delegate - Lewistown - Proposal #37 - Earmarking.

49. Thomas Ask - Delegate - Roundup - Proposal # - Deletion of section 3 of Article XII.

50. James Felt - Delegate - Billings - Article XII, section 3.

51. Robert Corette - Attorney, Western Energy Company - Butte - Article XII, section 3.

52. R. I. MacDonald - Anaconda Company - Butte - Article XII, section 3.

53. Ed Quinn - Anaconda Company - Butte - Article XII, section

2.

54. Fred Wetzstein - Montana Farm Bureau - Sula - Retention of Anti-diversion Amendment.

55. Senator William Bertsche - Great Falls - Amendment to the Anti-diversion Provision.

56. E. W. Boles - Kalispell Chamber of Commerce - Retention of Anti-diversion Amendment.

57. Gene Gillette - Conrad National Bank - Kalispell - Retention of Anti-diversion Amendment.

58. Bud Manion - Manion's - Kalispell - Retention of Anti-diversion Amendment.

59. Cecil Hudson - Chamber of Commerce - Columbia Falls - Retention of Anti-diversion Amendment.

60. Dan Mizner - Executive Director, Montana League of Cities and Towns - Helena - Retention of Anti-Diversion Amendment.

61. Dean Zinnecker - Executive Secretary, Montana Association of County Commissioners - Helena - Retention of Anti-diversion Amendment.

62. Harry Billings - Montana AFL-CIO - Helena - Retention of Anti-diversion Amendment.

63. Edward A. Gill - Powell County Economic Commission - Deer Lodge - Retention of Anti-diversion Amendment.

64. Del Siewart - Montana Chamber of Commerce - Helena - Retention of Anti-diversion Amendment.

65. Richard Roeder - Delegate - Bozeman - Against Retention of Anti-diversion Amendment - Against Earmarking.

66. Ralph Dreyer - University of Montana - Missoula - Against Earmarking.

67. Dorothy Eck - Delegate - Bozeman - Against Earmarking.

68. Representative Terry Murphy - Rancher - Cardwell - Against Earmarking.

69. Representative Larry Fasbender - Rancher - Fort Shaw - General Taxation.

70. Todd Lindberg - President, Montana Society of CPA's - Helena - Auditing of State Investments.

71. Howard Gaare - Montana Society of CPA's - Great Falls -

Auditing of State Investments.

72. Gary E. Demarest - Montana Society of CPA's - Helena - Auditing of State Investments.

73. Joseph Loendorf - Montana Society of CPA's - Helena - Auditing of State Investments.

74. Jack Stevens - Montana Society of CPA's - Great Falls - Auditing of State Investments.

75. Steve Paulson, Jr. - Montana Society of CPA's - Great Falls - Auditing of State Investments.

76. Magnus Aasheim - Delegate - Antelope - Proposal #119 - Special Levies.

77. Max Conover - Delegate - Billings - Proposal #119 - Special Levies.

78. Jerome Loendorf - Delegate - Helena - Proposal #173 - Tax Exemptions for Totally Disabled Veterans.

79. John Cadby - Executive Secretary, Montana Automobile Dealers Association - Helena - Proposal #66 - Fee System of Registration for Motor Vehicles.

80. Mors Seigen - Executive Secretary, Montana Stockgrowers Association - Helena - Retention of Livestock Mill Levy.

81. William Cheney - Executive Officer, Livestock Commission - Helena - Retention of Livestock Mill Levy.

82. Archie Wilson - Delegate - Hysham - Retention of Livestock Mill Levy.

83. Douglas Delaney - Delegate - Grass Range - Retention of Livestock Mill Levy.

84. Wesley W. Wertz - Attorney - Helena - General Finance and Taxation.

85. Mayor Laurence Bjorneby - Kalispell - In support of Romney Draft of Revenue and Finance Article.

86. Mrs. John Nelson Hall - President, Great Falls City Council - Great Falls - In support of Romney Draft of Revenue and Finance Article.

87. Mayor John McLaughlin - Great Falls - In support of Romney Draft of Revenue and Finance Article.

88. Ward Shanahan - Attorney representing Carroll College Board of Trustees - Helena - Amendment to section 5 of Rough

Draft.

89. Paul Feller - Chancellor of Montana Episcopal Diocese - Helena - Amendment to section 5 of Rough Draft.

90. Leo Walchuk - Comptroller, Carroll College - Helena - Amendment to section 5 of Rough Draft.

91. Keith Anderson - Executive Vice President, Montana Taxpayers Association - Helena - Revenue and Finance Rough Draft.

92. Dave Smith - Executive Secretary, Montana Woolgrowers Association - Helena - Revenue and Finance Rough Draft.

93. Dan Mizner - Executive Director, Montana League of Cities and Towns - Helena - Revenue and Finance Rough Draft.

94. John Franking - Director, Montana Catholic Conference - Helena - Revenue and Finance Rough Draft.

95. Chadwick Smith - Attorney, Montana School Boards Association and Montana Hospital Association - Helena - Amendment to section 5 of Rough Draft.

96. Rod Gudgel - Montana Nursing Home Association - Helena - Support of Mr. Smith's Amendment to section 5 of Rough Draft.

97. Robert Kelleher - Delegate - Billings - Proposal #110 - $1 of State income tax return to be donated to party of person's choice.

98. Hank Tescheres - Missoula Chamber of Commerce - Missoula - Proposal #35 - Preferential Taxation.

99. David J. Maclay - Missoula - Proposal #35 - Preferential Taxation.

100. Roy Seifert - Veteran's Council of Montana - Helena - Proposal #173 - Tax Exemptions for Totally Disabled Veterans.

101. Donald Gottwig - Disabled American Veterans - Helena - Amending Proposal #173 - Tax Exemptions for Totally Disabled Veterans.

102. James Felt - Delegate - Billings - Proposal #101 - Revenue and Finance in general.

103. Jack Crosser - Deputy Director, Department of Administration - Helena - State Investments.

104. R. L. MacDonald - Anaconda Company - Butte - Retention of

Net Proceeds Tax.

105. Vern Miller - State Board of Equalization - Helena - Appraising and Assessing of Property.

106. Cedor Aronow - Delegate - Shelby - Delete section 3 of Article XII.

107. Barry Benjamin - Shelby - Article XII, section 3.

108. George McGrath - Silver Bow County - Butte - Retain Net Proceeds Tax.

109. Shag Miller - President, Butte Chamber of Commerce - Butte - Retain Net Proceeds Tax.

110. Thomas Joyce - Delegate - Butte - Delete section 3 of Article XII and have an "in lieu" tax to be averaged out over the year.

111. Mayor M. A. Micone - Butte - Retain Net Proceeds Tax.

112. Lawrence G. Stimatz - County Attorney - Silver Bow County, Butte - Retain Net Proceeds Tax.

APPENDIX D

ROLL CALLS ON MINORITY PROPOSAL

MEMBER	SECTION	1	2	3	4	5	6	7	8	9	10	11	12	13	TOTAL Y	TOTAL N	TOTAL A
Artz						Y								Y	2	0	
Berthelson						N								N	0	2	
Drum						N								N	0	2	
Furlong						N								N	0	2	
McDonough						N								N	0	2	
McKeon						Y								Y	2	0	
Wagner						N								N	0	2	
Rygg						N								N	0	2	
Driscoll						Y								Y	2	0	
TOTAL	Yea					3								3			
	Nay					6								6			
	Absent																

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

BILL OF RIGHTS COMMITTEE PROPOSAL

No. VIII

Date Reported: February 23, 1972

/s/ Wade J. Dahood, Chairman

/s/ Chet Blaylock, Vice Chairman

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Date: February 22, 1972

To: MONTANA CONSTITUTIONAL CONVENTION

From: Bill of Rights Committee

Ladies and Gentlemen:

The Bill of Rights Committee submits herewith a proposed new Declaration of Rights of the People of the State of Montana. The proposed article is intended to replace in its entirety Article III of the present Constitution. In doing so, the committee notes that not one of the traditional rights of that Declaration has been diminished; and, to meet the changing circumstances of contemporary life, new safeguards have been added where appropriate.

In its deliberations, the committee was careful to give consideration to all proposals concerning civil liberties. No proposal was adopted or rejected without considered deliberation. The committee is pleased to have reached near unanimity on such an important matter as the basic rights of an individual in a free society. There are no minority reports. Countervailing opinions were freely and fully aired. The issues on which there was some division are reflected in the comments and the roll call votes of Appendix F.

The committee appreciates the public involvement and concern with the rights questions facing it and thanks those who took the time to appear in person or write expressing their opinions on these matters. This testimony and the considered opinion of many delegates was most helpful in drafting this proposal. The commit-

tee also wishes to express its thanks to Jack Applegate, research analyst, Darlene Corbin, committee secretary, and George Paul and Michael Larum, student interns.

In presenting this proposed Declaration of Rights, the committee notes that the guidelines and protections for the exercise of liberty in a free society come not from government but from the people who create that government.

It is that spirit which has motivated this committee to insure for Montana's future, through this bill of rights, a more responsible government that is Constitutionally commanded never to forget that government is created solely for the welfare of the people so that the people can more fully enjoy the heritage of American liberty within the structure of that government.

Bearing this in mind, the committee commends this proposal to the convention with the hope that, whatever the outcome of the convention debates, the citizens of Montana will have a charter of civil liberties adequate for the foreseeable future. Surely no part of the Constitution being drafted is more important.

/s/ Wade J. Dahood
Chairman

/s/ Chet Blaylock
Vice Chairman

COMMITTEE PROPOSAL

BE IT PROPOSED BY THE BILL OF RIGHTS COMMITTEE:

That there be a new Article on the Bill of Rights to read as follows:

PREAMBLE

We the people of Montana grateful to God for the quiet beauty of our state, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life, equality of opportunity and to secure the blessings of liberty for this and future generations do ordain and establish this Constitution.

ARTICLE ___

DECLARATION OF RIGHTS

Section 1. POPULAR SOVEREIGNTY. All political power is vested in and derived from the people; all government of right originates with the people; is founded upon their will only, and is instituted solely for the good of the whole.

Section 2. SELF-GOVERNMENT. The people of the state have the exclusive right of governing themselves as a free, sovereign, and independent state. They may alter or abolish their Constitution and form of government whenever they may deem it necessary.

Section 3. INALIENABLE RIGHTS. All persons are born free and have certain inalienable rights which include the right of pursuing life's basic necessities, of enjoying and defending their lives and liberties, of acquiring, possessing and protecting property and of seeking their safety, health and happiness in all lawful ways. In enjoying these rights, the people recognize corresponding responsibilities.

Section 4. INDIVIDUAL DIGNITY. The dignity of the human being is inviolable. No person shall be denied the equal protection of the law, nor be discriminated against in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas, by any person, firm, corporation, or institution; or by the state, its agencies or subdivisions.

Section 5. FREEDOM OF RELIGION. The state of Montana shall make no law respecting an establishment of religion, or prohib-

iting the free exercise thereof.

Section 6. FREEDOM OF ASSEMBLY. The people shall have the right peaceably to assemble, petition for redress or protest governmental action.

Section 7. FREEDOM OF SPEECH, EXPRESSION AND PRESS. No law shall be passed impairing the freedom of speech or expression. Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty. In all suits and prosecutions for libel or slander the truth thereof may be given in evidence, and the jury, under the direction of the court, shall determine the law and the facts.

Section 8. RIGHT OF PARTICIPATION. The public shall have the right to expect governmental agencies to afford every feasible opportunity for citizen participation in the operation of the government prior to the final decision.

Section 9. RIGHT TO KNOW. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy exceeds the merits of public disclosure.

Section 10. RIGHT OF PRIVACY. The right of privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

Section 11. SEARCHES AND SEIZURES. The people shall be secure in their persons, papers, homes and effects, from unreasonable searches and seizures and invasions of privacy, and no warrant to search any place, or seize any person or thing shall issue without describing the place to be searched, or the person or thing to be seized, nor without probable cause, supported by oath or affirmation, reduced to writing.

Section 12. RIGHT TO BEAR ARMS. The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.

Section 13. RIGHT TO SUFFRAGE. All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

Section 14. ADULT RIGHTS. Persons eighteen (18) years of age are declared to be adults for all purposes and shall have the right to hold any public office in the state.

Section 15. RIGHTS OF PERSONS UNDER THE AGE OF MAJORITY. The rights of persons under the age of majority shall include, but not be limited to, all the fundamental rights of this article

except where specifically precluded by laws which enhance the protection for such persons.

Section 16. THE ADMINISTRATION OF JUSTICE. Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character; no person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation Laws of this state; and that right and justice shall be administered without sale, denial, or delay.

Section 17. DUE PROCESS OF LAW. No person shall be deprived of life, liberty, or property without due process of law.

Section 18. NON-IMMUNITY FROM SUIT. The state and its subdivisions shall have no special immunity from suit. This provision shall apply only to causes of action arising after June 1, 1973.

Section 19. HABEAS CORPUS. The privilege of the writ of habeas corpus shall never be suspended.

Section 20. INITIATION OF PROCEEDINGS. Criminal offenses of which courts inferior to the district courts have jurisdiction shall be prosecuted by complaint. All criminal actions in district court, except those on appeal, shall be prosecuted by information, after examination and commitment by a magistrate, or after leave granted by the court, or shall be prosecuted by indictment without such examination or commitment, or without such leave of the court. A grand jury shall consist of seven persons, of whom five must concur to find an indictment. A grand jury shall only be drawn and summoned when the district judge shall, in his discretion, consider it necessary, and shall so order.

Section 21. BAIL. All persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great.

Section 22. EXCESSIVE SANCTIONS. Excessive bail shall not be required, or excessive fines imposed, or cruel and unusual punishments inflicted.

Section 23. DETENTION. No person shall be imprisoned for the purpose of securing his testimony in any criminal proceeding longer than may be necessary in order to take his deposition. If he can give security for his appearance at the time of trial, he shall be discharged upon giving the same; if he cannot give security, his deposition shall be taken in the manner prescribed by law, and in the presence of the accused and his counsel, or without their presence, if they shall fail to attend the examination after reasonable notice of the time and place thereof. Any

deposition authorized by this section may be received as evidence on the trial, if the witness shall be dead or absent from the state.

Section 24. RIGHTS OF THE ACCUSED. In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right of the state to have a change of venue for any of the causes for which the defendant may obtain the same.

Section 25. SELF-INCRIMINATION AND DOUBLE JEOPARDY. No person shall be compelled to testify against himself in a criminal proceeding, nor shall any person be twice put in jeopardy for the same offense previously tried in any jurisdiction.

Section 26. TRIAL BY JURY. The right of trial by jury shall be secured to all, and remain inviolate, but in all cases and upon default of appearance, or by consent of the parties expressed in such manner as the law may prescribe, a trial by jury may be waived, or a trial had by any less number of jurors than the number provided by law. In all civil actions two-thirds in number of the jury may render a verdict, and such verdict so rendered shall have the same force and effect as if all such jury concurred therein. In all criminal actions, the verdict shall be unanimous.

Section 27. IMPRISONMENT FOR DEBT. No person shall be imprisoned for debt except in the manner prescribed by law, upon refusal to deliver up his estate for the benefit of his creditors, or in cases of tort, where there is strong presumption of fraud.

Section 28. RIGHTS OF THE CONVICTED. Laws for the punishment of crime shall be founded on the principles of prevention and reformation and full rights shall be automatically restored upon termination of state supervision for any offense against the state.

Section 29. EMINENT DOMAIN. Private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made to or paid into court for the owner. In the event of litigation, just compensation shall include necessary expenses of litigation to be awarded by the court when the private property owner is the prevailing party.

Section 30. TREASON AND DESCENT OF ESTATES. Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; no person shall be convicted of treason except on the testimony of two wit-

nesses to the same overt act, or on his confession in open court; no person shall be attainted of treason or felony by the legislative assembly; no conviction shall cause the loss of property to the relatives or heirs of the convicted. The estates of suicides shall descend or vest as in cases of natural death.

Section 31. EX POST FACTO, OBLIGATION OF CONTRACTS AND IRREVOCABLE PRIVILEGES. No ex post facto law nor law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislative assembly.

Section 32. CIVILIAN CONTROL OF THE MILITARY. The military shall always be in strict subordination to the civil power; no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in the manner prescribed by law.

Section 33. IMPORTATION OF ARMED PERSONS. No armed person or persons or armed body of men shall be brought into this state for the preservation of the peace, or the suppression of domestic violence, except upon the application of the legislative assembly, or of the governor when the legislative assembly cannot be convened.

Section 34. UNENUMERATED RIGHTS. The enumeration in this Constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

/s/ Wade J. Dalcod
Chairman

/s/ Chet Blaylock
Vice Chairman

/s/ Bob Campbell /s/ Dorothy Eck /s/ Donald R. Foster

/s/ H. S. Hanson /s/ George James /s/ Rachell Mansfield

/s/ Lyle Monroe /s/ Marshall Murray /s/ Veronica Sullivan

COMMENTS ON COMMITTEE PROPOSAL

PREAMBLE

We the people of Montana grateful to God for the quiet beauty of our state, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life, equality of opportunity and to secure the blessings of liberty for this and future generations do ordain and establish this Constitution.

COMMENTS

The Bill of Rights Committee felt that Montana is unique both in the beauty of the state and the strength of the individuals who were dedicated to establishing a state from a rich wilderness.

The paintings of Charles M. Russell captured the rugged individualism which was surrounded by unmatched scenery. This was described by John Steinbeck as the "grandeur" of the mountains in western Montana and "rolling grasslands" of eastern Montana. Grandeur was included in the Preamble, but the majority of the committee preferred the term "vastness of our rolling plains" to "richness of our rolling grasslands".

The "quiet beauty of our state" includes considerations of the land, air, and water of our state and describes the peacefulness that the people have always desired since the early inhabitants first shared a special relationship with the spirit of their Creator.

Because of the concern of those in the convention and the state that not mentioning "God" specifically would be unacceptable the committee voted unanimously to retain Him in the Preamble. Although the committee preferred the term "Spirit of Creation" or "Spirit of our Creator", it did not believe the emotional response raised would justify the change.

The final two phrases represent the reason for living under a Constitutional government which is intended to improve the quality of life and equality of opportunity. The committee urges that each individual should be given the same opportunity to develop to his full potential.

We believe this Preamble represents the essence of what we in Montana cherish in our surroundings and our highest ideals of improving the quality of our lives in a free society.

In drafting this Preamble; the committee used delegate proposals No's. 59, 67, 86, and 118.

ARTICLE ---

DECLARATION OF RIGHTS

Section 1. POPULAR SOVEREIGNTY. All political power is vested in and derived from the people; all government of right originates with the people; is founded upon their will only, and is instituted solely for the good of the whole.

COMMENTS

After some discussion, the committee decided unanimously to leave this statement of political philosophy as it was in the 1889 Constitution. Several re-drafts were attempted with unsatisfactory results. Although these re-drafts would have shortened the provision somewhat, it was suggested that they would leave out important concepts of political philosophy. As it stands, this section contains the notion of popular sovereignty, announces that legitimate government is founded on the will of the people and provides that the sole end of government is the good of the whole.

The committee understands that this and other political philosophy provisions are not often immediately justiciable, yet believe that such provisions announce the principles upon which legitimate government rests thereby providing yardsticks for assessing the quality of governmental operation.

No delegate proposals were submitted on this provision.

Section 2. SELF-GOVERNMENT. The people of the state have the exclusive right of governing themselves as a free, sovereign, and independent state. They may alter or abolish their Constitution and form of government whenever they may deem it necessary.

COMMENTS

The committee decided with one dissenting vote that this section might be re-drafted to make it more readable without changing its essence. Accordingly, wordings which were believed redundant or excessive were deleted and complete sentence structure was employed where necessary. These revisions considerably shorten the provision without changing its meaning or intent. The principle as submitted states the right of Montanans to govern themselves and to alter or abolish their Constitution and form of government. No delegate proposals were submitted on this provision.

Section 3. INALIENABLE RIGHTS. All persons are born free and have certain inalienable rights which include the right of pursuing life's basic necessities, of enjoying and defending their lives and liberties, of acquiring, possessing and protecting property and of

seeking their safety, health and happiness in all lawful ways. In enjoying these rights, the people recognize corresponding responsibilities.

COMMENTS

The committee proposes with two dissenting votes that the former Article III, section 3 be retained with a few substantive changes. The committee struck language which was felt to be redundant. In addition, it is recommended that the right to pursue life's basic necessities be incorporated as a statement of principle. The intent of the committee on this point is not to create a substantive right for all for the necessities of life to be provided by the public treasury.

The committee heard considerable testimony, from low income and social services people alike, that the state's current public assistance programs are not meeting the genuine needs of low income people who, because of circumstances beyond their control, are unable to obtain basic necessities. Accordingly, it is hoped that the legislature will have occasion to review these programs and upgrade them where necessary to provide full necessities to those in genuine need and to curt whatever abuses may exist in the programs.

What was attempted in this part of the proposed section was a statement of the principle that all persons have the inalienable right to pursue the basic necessities of life--that there can be no right to life apart from the possibility of existence.

The other inalienable rights were included with only minor changes in style for purposes of clarity. An additional right, the right of seeking health was incorporated in recognition of the fact that a right to life without health is a sorry proposition.

The final sentence of this section is new having been derived from delegate proposal No. 116. Testimony was received both favoring and opposing the inclusion of a statement of corresponding responsibilities in the declaration of rights. Some expressed the feeling that many were accepting rights without recognizing that they create obligations. Others were adamant that a declaration of rights should contain just that: the rights of persons against governmental abuses and the rights of minorities against the power of unchecked majorities. The committee felt that the inclusion of such a statement does not infringe or impair the rights granted in the declaration of rights but only accords a tone of responsibility to their exercise.

A number of delegate proposals were rejected in the drafting of this section. Delegate proposal No. 45 stipulated a substantive right to the necessities of life. No. 93 proposed an inalienable right to collectively bargain. The committee felt

that the issue of collective bargaining--as well as its counterpart the right to work--were properly statutory matters.

Section 4. INDIVIDUAL DIGNITY. The dignity of the human being is inviolable. No person shall be denied the equal protection of the law, nor be discriminated against in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas, by any person, firm, corporation, or institution; or by the state, its agencies or subdivision.

COMMENTS

The committee unanimously adopted this section with the intent of providing a Constitutional impetus for the eradication of public and private discriminations based on race, color, sex, culture, social origin or condition, or political or religious ideas. The provision, quite similar to that of the Puerto Rico declaration of rights is aimed at prohibiting private as well as public discriminations in civil and political rights.

Considerable testimony was heard concerning the need to include sex in any equal protection or freedom from discrimination provisions. The committee felt that such inclusion was eminently proper and saw no reason for the state to wait for the adoption of the federal Equal Rights Amendment, an amendment which would not explicitly provide as much protection as this provision.

The word culture was incorporated specifically to cover groups whose cultural base is distinct from mainstream Montana, especially the American Indians. "Social origin or condition" was included to cover discriminations based on status of income and standard of living.

Some fears were expressed that the wording "political or religious ideas" would permit persons who supported right to work in principle to avoid union membership. Such is certainly not the intent of the committee. The wording was incorporated to prohibit public and private concerns discriminating against persons because of their political or religious beliefs.

The wording of this section was derived almost verbatim from Delegate Proposal No. 61. The committee felt that this proposal incorporated all the features of all the Delegate Proposals (No.'s 10, 32, 50 and 51) on the subjects of equal protection of the laws and the freedom from discrimination. The committee is well aware that any broad proposal on these subjects will require considerable statutory embellishment. It is hoped that the legislature will enact statutes to promote effective eradication of the discriminations prohibited by this section. The considerable support for and lack of opposition to this provision indicates its import and advisability.

Section 5. FREEDOM OF RELIGION. The state of Montana shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.

COMMENTS

The committee decided unanimously to substitute the concise wording of the freedom of religion clause of the federal First Amendment. Much testimony was heard on this provision, most of it on the subject of public aid to church-related schools. The committee felt that this issue should be dealt with, as it was, by the Education and Public Lands Committee and that the provision incorporated into the Declaration of Rights should restrict itself to guaranteeing the free exercise of religion and prohibiting the establishment of any religion.

The committee felt especially strong about removing the anti-Mormon biases reflected in the previous wording of Article III, section 4. Beyond that, the committee noted that since the religions which historically were persecuted were those alleged to violate or threaten the good order, peace and safety of the state, such passages were of dubious merit in a statement of religious liberty. Accordingly, both--of considerable length--were deleted. What remains is the tradition-ridden guarantee of religious liberty adopted by the first US Congress in 1789 as part of the federal Bill of Rights.

Realizing the legal, social and political problems of the church-state area are exceedingly complex, it is not urged that this provision will simplify their resolution. However, it will certainly not make the understanding of these compelling and sometimes paradoxical concerns more difficult.

Section 6. FREEDOM OF ASSEMBLY. The people shall have the right peaceably to assemble, petition for redress or to protest governmental action.

COMMENTS

The committee unanimously recommended that the former Article III, section 26 be adopted with only one stylistic change. The basic right to assemble for redress of grievances by petition or remonstrance remains unchanged. The wording was tightened up a little and the phrase "protest governmental action" was substituted for the phrasing "apply to those invested with the powers of government for redress of grievances..by remonstrance." In doing so, the committee notes the paramount position of the right and the invaluable function its responsible exercise plays in a democratic society.

Section 7. FREEDOM OF SPEECH, EXPRESSION AND PRESS. No law shall be passed impairing the freedom of speech or expression. Every person shall be free to speak or

publish whatever he will on any subject, being responsible for all abuse of that liberty. In all suits and prosecutions for libel or slander the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts.

COMMENTS

The committee unanimously proposes the adoption of former Article III, section 10 with one substantive change. The freedom of speech is extended, in line with federal decisions under the First Amendment, to cover the freedom of expression. Hopefully, this extension will provide impetus to the courts in Montana to rule on various forms of expression similar to the spoken word and the ways in which one expresses his unique personality in an effort to re-balance the general backseat status of states in the safeguarding of civil liberties. The committee wishes to stress the primacy of these guarantees in the hope that their enforcement will not continue merely in the wake of the federal case law.

Other minor changes made in the section were merely stylistic in nature except for the inclusion of the word "slander" to provide protection against abuses of the free speech and press guarantees in cases of spoken as well as written word. The committee retained the established principle that in libel trials the jury shall decide the law and the facts on the theory that removal of this clause might be construed as the denial of a right. The principle is continued with the note that in cases of libel it is necessary for the prosecutor to convince both the court and the jury before the free speech and press protections are overridden (Harrington v. Butte Miners Co. Et. Al., 48 Mont. 550, 554, 139 p. 451).

Section 9. RIGHT OF PARTICIPATION. The public shall have the right to expect governmental agencies to afford every feasible opportunity for citizen participation in the operation of the government prior to the final decision.

COMMENTS

The committee unanimously adopted this section in response to the increased public concern and literature about citizen participation in the decision-making processes of government. The provision is in part a Constitutional sermon designed to serve notice to agencies of government that the citizens of the state will expect to participate in agency decisions prior to the time the agency makes up its mind. In part, it is also a commitment at the level of fundamental law to seek structures, rules and procedures that maximize the access of citizens to the decision-making institutions of state government. The committee believes that this is eminently proper and that it will have a salutary effect not only on the quality of the final decisions, but more impor-

tant, on the deliberative and political capabilities of the citizenry. It is hoped that this provision will play a role in reversing the dissatisfactions increasingly expressed regarding bureaucratic authority insulated from public scrutiny and participation. The wording of the provision is derived from Delegate Proposal No. 38.

> Section 9. RIGHT TO KNOW. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demands of individual privacy exceeds the merits of public disclosure.

COMMENTS

The committee, with two dissenting votes, and after considerable reflection, adopted this provision explicitly establishing a public right to know. In the main, the provision is from Delegate Proposal No. 57. It is a companion to the preceding right of participation. Both arise out of the increasing concern of citizens and commentators alike that government's sheer bigness threatens the effective exercise of citizenship. The committee notes this concern and believes that one step which can be taken to change this situation is to Constitutionally presume the openness of government documents and operations. The provision stipulates that persons have the rights to examine governmental documents and the deliberations of all public bodies or agencies except to the extent that the demands of individual privacy outweigh the needs of the public right of disclosure. The provision applies to state government and its subdivisions. The committee intends by this provision that the deliberation and resolution of all public matters must be subject to public scrutiny. It is urged that this is especially the case in a democratic society wherein the resolution of increasingly complex questions leads to the establishment of a complex and bureaucratic system of administrative agencies. The test of a democratic society is to establish full citizen access in the face of this challenge.

The committee approvingly cites section 82-3401 of the Revised Codes of Montana, 1947, which provides: "It is the intent of this act (the open meeting law) that actions and deliberations of all public agencies shall be conducted openly. The people of the state do not wish to abdicate their sovereignty to the agencies which serve them..."

The committee, during its deliberations on this provision, struck the word "public" from the phrase "to examine (public) documents." This was done to avoid tying the viability of this provision to the 1895 legislative efforts to define public and private writings. Sections 2 and 3 of Title 93, Chapter 1001 of the Revised Codes of Montana, 1947, define these two classes of writings. Broad categories of what constitute public writings are stipulated in section 2. Section 3 proclaims that <u>all</u> other writ-

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ings are private. The committee admits that this list of public writings is admirably broad; however, using this type of statutory construction is dangerous when one is attempting to establish a public right to know. Judging from the example of federal and state statutes on the matter, it is better to stipulate the exclusions rather than the inclusions. To do otherwise is to risk losing the right to examine a document because it does not fit statutory categories as a public document.

The committee intends by this provision that the right to know not be absolute. The right of individual privacy is to be fully respected in any statutory embellishment of the provision as well as in the court decisions that will interpret it. To the extent that a violation of individual privacy outweighs the public right to know, the right to know does not apply. To clearly establish this point, the committee stipulated in the provision that the right to know is subject to the demands of individual privacy.

The committee commends this provision to the Convention as a long step forward in assuring the openness in government. By creating an atmosphere of openness in government, the committee believes that confidence in government will increase and governmental operation will be facilitated. Such a provision, far from limiting the effectiveness of governmental operation, establishes the prerequisite to the effective exercise of citizenship in a democratic society.

> Section 10. RIGHT OF PRIVACY. The right of privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

COMMENTS

The committee unanimously adopted this section--similar to Delegate Proposal No. 33--in order to guarantee the right of privacy. What it accomplishes is the elevation of the judicially-announced right of privacy to explicit Constitutional status. The right has been guaranteed in case law at the federal level [Griswold v. Connecticut, 381 U. S. 479 (1965)] and in Montana [State v. Precht, 28 St. Rep. 468, 473 (May, 1971)]. The committee believes the Constitution should specify that the only circumstance in which the right of privacy may be infringed is following the showing of a compelling state interest. This is in response to the increasing concern expressed nationwide that the sphere of individual privacy is in danger of eclipse in an advanced technological society. The point of this provision is not to prohibit all invasions of privacy but to require that no invasion of privacy should occur until and unless a compelling state interest has been established.

The committee proposed a broad provision in this area to permit flexibility to the courts in resolving the tensions

between public interests and privacy. It is hoped that the legislature will have occasion to provide additional protections for the right of privacy in explicit areas where safeguards are required. An example of a potential legislative subject matter can be seen in Delegate Proposal No. 124 which prohibited requiring submission to a lie detector or similar test as a condition of employment.

> Section 11. SEARCHES AND SEIZURES. The people shall be secure in their persons, papers, homes and effects, from unreasonable searches and seizures and invasions of privacy, and no warrant to search any place, or seize any person or thing shall issue without describing the place to be searched, or the person or thing to be seized, nor without probable cause, supported by oath or affirmation, reduced to writing.

COMMENTS

The committee unanimously recommends the adoption of Article III, Section 7 with only one substantive change. The phrase "invasions of privacy" was included to apply the traditional safeguards accompanying searches and seizures to any invasions of privacy. This section is the procedural companion of substantive section 10 of this final draft. They stipulate that even after the showing of a compelling state interest the state must abide by certain procedural guidelines.

The committee had incorporated into the tentative rough draft safeguards for wiretapping, electronic surveillance and other means of communications interceptions. After hearing further testimony, the committee decided to delete any reference to interceptions of communications. The committee does not wish to authorize, explicitly or implicitly, the interception of communications by state officials. The committee notes that no testimony was offered alleging any need for wiretap authority at the state level; nor were there any crimes stipulated which would justify an explicit or implicit grant of such authority to any state official. In addition, it is noted that federal officials already have the authority to wiretap for a number of serious offenses. Accordingly, the committee believes that the privacy of communications should remain inviolate "from state-level interceptions."

The committee is aware that the legislature is empowered by the Federal Omnibus Crime Control and Safe Streets Act of 1968 to grant wiretap authority to state officials. It is noted that any such legislative enactment would require, under this and the preceding proposed provision, the showing of a compelling state interest. The committee, seeing the immediate potential abuses of wiretap authority at the state level, believes this is only proper.

Delegate Proposal No. 14 was rejected in part as an implicit grant of communications interceptions authority.

Section 12. RIGHT TO BEAR ARMS. The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.

COMMENTS

The committee voted unanimously that the Montana provision guaranteeing the right to keep and bear arms remain as is. In doing so, it is noted that the Montana provision goes beyond the Federal Second Amendment in that it guarantees an individual right to keep and bear arms. From some of the testimony received, it was apparent that many were unaware that the Federal Constitution stipulates only a collective right to keep and bear arms, and explicitly predicates that right on the maintenance of a well-regulated military.

Testimony was heard in favor of guaranteeing the right to possess and bear arms without registration, license, or tax. The committee notes that the statutory efforts to regulate the possession of firearms have been at the federal level and are, therefore, not subject to state Constitutional provisions. In addition, it is urged--and requires no citation--that the right to bear arms is subject to the police power of the state. Any such regulation must, of course, stand in some relation to the public good and must not violate due process or equal protection of the laws.

Delegate Proposal No. 4 was rejected as a lengthy provision that would have frozen into the Constitution without any state precedent a good number of matters best dealt with at the more flexible statutory level. As proposed, the Montana provision on the right to keep and bear arms remains one of the very strongest in the nation.

Section 13. RIGHT TO SUFFRAGE. All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

COMMENTS

The committee felt that this section should be left as is, a guarantee that the right of suffrage shall not be interfered with and that elections shall be free and open. Accordingly the provision as proposed is the verbatim wording of Article III, section 5 of the present Montana Constitution. The provision is supplemented, but not replaced by, the proposals of the General Government Committee on suffrage and elections. No delegate proposals were received on this provision.

Section 14. ADULT RIGHTS. Persons eighteen (18) years of age are declared to be adults for all purposes and shall have the right to hold any public office in the state.

COMMENTS

The committee approved, with one dissenting vote, this new provision which would declare eighteen year olds to be adults for all purposes. The provision further stipulates that eighteen year olds shall have the right to hold any public office in the state. The committee believes that the admirable steps taken by the federal government in adopting the Twenty-Sixth Amendment and by the Montana legislature in ratifying it should be extended to their logical conclusion. What the section provides is that all adults can vote and that any person eligible to vote is of sufficient age to seek election to any public office. The committee is well-aware that there will probably be few eighteen years olds running for the major offices of state government. Still, it is urged that should an eighteen year old be of the inclination and capability to run for such office, he ought not to be obstructed from presenting himself before the electorate as a candidate; and, if he can secure the votes necessary for election, he ought not to be denied the office because of his age. The point of the provision is that the electorate can and should be able to choose to elect any adult it wishes, regardless of his age. Certainly, if the electorate would support an adult of eighteen years for an office, an arbitrary age requirement such as the Constitution and statutes contain, should not deny him the office.

The committee commends this provision to the convention as the extension of full rights of participation in public affairs to all adults. This provision was introduced as Delegate Proposal No. 13.

Section 15. RIGHTS OF PERSONS UNDER THE AGE OF MAJORITY. The rights of persons under the age of majority shall include, but not be limited to, all the fundamental rights of this article except where specifically precluded by laws which enhance the protection for such persons.

COMMENTS

The committee adopted, with one dissenting vote, this statement explicitly recognizing that persons under the age of majority have all the fundamental rights of the Declaration of Rights. The only exceptions permitted to this recognition are in cases in which rights are infringed by laws designed and operating to enhance the protection for such persons. The committee took this action in recognition of the fact that young people have not been held to possess basic civil rights. Although it has been held that they are 'persons' under the due process clause of the Fourteenth Amendment, the Supreme Court has not ruled in their favor

under the equal protection clause of that same amendment. What this means is that persons under the age of majority have been accorded certain specific rights which are felt to be a part of due process. However, the broad outline of the kinds of rights young people possess does not yet exist. This is the crux of the committee proposal: to recognize that persons under the age of majority have the same protections from governmental and majoritarian abuses as do adults. In such cases where the protection of the special status of minors demands it, exceptions can be made on clear showing that such protection is being enhanced.

This provision was taken, in part, from Delegate Proposals No's. 65 and 88.

Section 16. THE ADMINISTRATION OF JUSTICE. Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character; no person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the workmen's compensation laws of this state; and that right and justice shall be administered without sale, denial, or delay.

COMMENTS

The committee voted unanimously to retain this section with one addition. The provision as it stands in the present Constitution guarantees justice and a speedy remedy for all without sale, denial or delay. The committee felt, in light of a recent interpretation of the workmen's compensation law, that this remedy needed to be explicitly guaranteed to persons who may be employed by one covered by workmen's compensation to work on the facilities of another. Under Montana law, as announced in the recent decision of Ashcraft v. Montana Power Co., the employee has no redress against third parties for injuries caused by them if his immediate employer is covered under the Workmen's Compensation Law. The committee feels that this violates the spirit of the guarantee of a speedy remedy for all injuries of person, property or character. It is this specific denial--and this one only--that the committee intends to alter with the following additional wording: "no person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the workmen's compensation laws of this state." In other words the committee wants to insure that the workmen's compensation Laws of the state will be used for their original purpose--to provide compensation to injured workmen--rather than to deprive an injured worker of redress against negligent third parties (beyond his employer and fellow

employees) because his immediate employer is covered by Workmen's Compensation. The committee believes that clarifying this remedy would have a salutary effect on the conscientiousness of persons who may contract out work to be done on their premises. To permit no remedy against third parties in cases where the employer is covered by Workmen's Compensation is to encourage persons with rundown premises to contract out work without improving the quality of the premises. The committee urges that this is an abuse of the Workmen's Compensation Law and constitutes a mis-application of that law to protect persons who are negligent.

The committee commends this provision to the convention with the belief that it is an important, if technical, aspect of the administration of justice.

Section 17. DUE PROCESS OF LAW. No person shall be deprived of life, liberty, or property without due process of law.

COMMENTS

The committee felt that the tradition-ridden phrasing of the due process of law clause should remain as is. Accordingly, the wording of Article III, section 27 is incorporated verbatim in this proposal. The committee received no suggestion for change of this section.

Section 18. NON-IMMUNITY FROM SUIT. The state and its subdivisions shall have no special immunity from suit. This provision shall apply only to causes of action arising after June 1, 1973.

COMMENTS

The committee voted unanimously to adopt this section abolishing the archaic doctrine of sovereign immunity. In doing so, the committee responds to increasing citizen concern and the writing of legal scholars to the effect that the doctrine no longer has a rational justification in law. The committee notes that a clear trend has emerged nationwide to abolish the doctrine. The appellate courts of sixteen states have abolished the doctrine--a clear indication that they can no longer find a justification for its continued operation.

Briefly, the doctrine of sovereign immunity bars tort suits against the state for negligent acts by its officials and employees. The committee finds this reasoning repugnant to the fundamental premise of the American justice: all parties should receive fair and just redress whether the injuring party is a private citizen or a governmental agency. The committee believes that just as the government administers a system of justice between private parties it should administer the system when the government itself is alleged to have committed an injustice. The committee notes that private firms are liable for the negligence

of their employees and points out this fact to indicate the inconsistency of the state's position in the system of tort law. It is the belief of the committee that this proposed provision rectifies this inconsistency.

The committee cites with approval the recent Colorado decision in which that state's highest court abolished the doctrine. In responding to the old justification for sovereign immunity--that "the King can do no wrong"--the court said: "The monarchial philosophies invented to solve the marital problems of Henry VIII are not sufficient justification for the denial of the right of recovery against the government in today's society. Assuming that there was sovereign immunity of the Kings of England, our forebears won the Revolutionary War to rid themselves of such sovereign prerogative." (Evans v. Board of County Commissioners, (Colo., 482 P2d 968, 969 (1971); See also companion cases against the state and a school district.)

Under current Montana law, governmental agencies are liable only to the extent of the insurance coverage they carry. This leaves the decision as to the amount of coverage to be purchased with the agency. What this means is that an agency can effectively limit the actions brought against it. The committee feels that this is entirely too discretionary a situation when individual rights are at stake. Since adequate insurance can be obtained and can be budgeted in advance, agencies should have such coverage. This will insure that they are able to pay the justified claims made against them and that such claims will not be limited by inadequate insurance coverage.

The committee is well-aware that implementation of this provision could cause some difficulties if done without permitting affected agencies to upgrade their currently inadequate coverage. Accordingly, it is recommended that this provision not be retrospective in its application; that, in order to permit agencies time to obtain adequate insurance coverage as provided by legislative appropriation, it shall not be effective until June 1, 1973; and that it shall be effective only to causes of action arising after that date. The committee commends this provision to the convention with the belief that its adoption will insure that redress for wrongs will be administered on behalf of and against all parties, governmental as well as private. The wording of the provision is similar in purpose to delegate proposal 30.

Section 19. HABEAS CORPUS. The privilege of the writ of habeas corpus shall never be suspended.

COMMENTS

The committee believes that this most basic of procedural rights requires complete protection. Accordingly, the proposal provides that the writ of habeas corpus--the right to test the legitimacy of one's detention--ought never to be suspended. The committee is aware that a serious rebellion or invasion could

lead to a federal suspension of the writ. However, it is urged that the state of Montana should not suspend the writ at the state level without a problem of such magnitude as to require federal action. It seems plain that the federal government could be counted upon to assist in keeping the state courts open to review any habeas corpus petitions submitted even in a statewide emergency.

The committee notes that nine states have similar provisions that guarantee that the writ shall never be suspended. The importance of the writ can be seen in Montana history. In 1914, when the Governor proclaimed a state of insurrection in Silver Bow County, the military closed down the courts in that county and arrested persons without warrant or charge, held them without bail to be tried without a jury before a military tribunal. Some of those detained used the writ of habeas corpus to good effect, securing an order that the military re-open the courts in Silver Bow County. (In re Mc Donald, 49 Montana 454, 143 p. 947 (1914)). The committee cites this as an example of the value of this important procedural safeguard precisely in times of stress.

> Section 20. INITIATION OF PROCEEDINGS. Criminal offenses of which courts inferior to the district courts have jurisdiction shall be prosecuted by complaint. All criminal actions in district court, except those on appeal, shall be prosecuted by information, after examination and commitment by a magistrate, or after leave granted by the court, or shall be prosecuted by indictment without such examination or commitment, or without such leave of the court. A grand jury shall consist of seven persons, of whom five must concur to find an indictment. A grand jury shall only be drawn and summoned when the district judge shall, in his discretion, consider it necessary, and shall so order.

COMMENTS

The committee voted unanimously that this section which stipulates the method of initiating criminal proceedings should remain as is with one minor change. The phrase "justice's courts and municipal and other courts" was deleted as unnecessary and redundant wording. The remainder of the section is the verbatim rendering of the Article III, section 8 providing for prosecutions by complaint, information and indictment. It is noted that these fixed aspects of the initiation of proceedings are part of the basic procedural rights framework established to maintain the accusatorial nature of the system of criminal justice. No delegate proposals were received on this provision.

> Section 21. BAIL. All persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great.

COMMENTS

The committee voted unanimously to retain this section unchanged. As it stands, the section ensures that all persons are bailable except in certain capital offenses. No delegate proposals were received on this provision.

Section 23. EXCESSIVE SANCTIONS. Excessive bail shall not be required, or excessive fines imposed, or cruel and unusual punishments inflicted.

COMMENTS

The committee voted unanimously that this section be retained unchanged. It is thought that the section provides the judiciary and the legislature adequate flexibility to apply the principle that there shall not be excessive bail, excessive fines or cruel and unusual punishments. No delegate proposals were received on this provision.

Section 23. DETENTION. No person shall be imprisoned for the purpose of securing his testimony in any criminal proceeding longer than may be necessary in order to take his deposition. If he can give security for his appearance at the time of trial, he shall be discharged upon giving the same; if he cannot give security, his deposition shall be taken in the manner prescribed by law, and in the presence of the accused and his counsel, or without their presence, if they shall fail to attend the examination after reasonable notice of the time and place thereof. Any deposition authorized by this section may be received as evidence on the trial, if the witness shall be dead or absent from the state.

COMMENTS

The committee voted unanimously to retain the former Article III, section 17 unchanged. The provision prohibits unreasonable detention of witnesses and prescribes in detail the procedure for securing testimony in the event the witness can not be procured for the trial. No delegate proposals were received on this provision.

Section 24. RIGHTS OF THE ACCUSED. In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right of the state to have a change of venue for any of the causes for which the defendant may obtain the same.

COMMENTS

The committee voted unanimously to retain the former Article III, section 16 unchanged. The committee felt it was an admirable statement of the fundamental procedural rights of an accused. No delegate proposals were received on this provision.

Section 25. SELF-INCRIMINATION AND DOUBLE JEOPARDY. No person shall be compelled to testify against himself in a criminal proceeding, nor shall any person be twice put in jeopardy for the same offense previously tried in any jurisdiction.

COMMENTS

The committee recommends the adoption of the former Article III, section 16 with one substantive change. It is noted that the "two sovereignties rule" is still in effect at the federal level. In recent years, the rule which permits prosecutions by different jurisdictions for the same offense arising from the same set of criminal facts, has come under scrutiny and criticism. The provision recommended by this committee would prohibit the state from following the prosecution of another jurisdiction for the same offense and criminal facts. The committee is well-aware that the state Constitution cannot limit the federal government in this practice. However, as the committee believes that subsequent prosecutions as those described above are a violation of the protection against double jeopardy, it is hoped that the federal government and the state can cooperate in cases involving violations of the laws of both jurisdictions. In this way, a person accused of a crime will be placed in jeopardy only once in accordance with long-established principles.

Delegate proposals No's 88 and 124 were rejected. It was felt that #88, which extended the self-incrimination prohibition to any kind of evidence, was unworkable and might indirectly invalidate the implied consent law. Proposal #124 prohibited lie detector and other self-incriminating tests for employment. The committee felt that the particulars of this proposal were properly statutory matters and, along with a host of other privacy matters should be dealt with by the legislature. It was also felt that the complementary protection of the right of privacy in section 10 of this proposal would offer protection against privacy invasions made as a condition of employment.

Section 26. TRIAL BY JURY. The right of trial by jury shall be secured to all, and remain inviolate, but in all cases and upon default of appearance, or by consent of the parties expressed in such manner as the law may prescribe, a trial by jury may be waived, or a trial had by any less number of jurors than the number provided by law. In all civil actions two-thirds in number of the jury may render a verdict, and such verdict so

rendered shall have the same force and effect as if all such jury concurred therein. In all criminal actions, the verdict shall be unanimous.

COMMENTS

The committee voted unanimously to make some changes in the section on trial by jury. The first of these permits the defendant to waive a jury trial in felony cases as well as civil and misdemeanor cases. The committee felt that expanding the choice of a defendant to waive a jury trial to include felony cases, the defendant could decide with the aid of his attorney whether to try his case before a jury or the judge sitting alone. The defendant may well desire to eliminate the time incarcerated while waiting for the next jury term or may feel in certain instances that his chances of fairly presenting his case are better without a jury.

The committee also felt that it was essential to strengthen the presumption of innocence in all criminal actions by requiring a unanimous verdict for misdemeanors as well as felonies. It is urged by the committee that since guilt must be clearly established in all criminal cases, there should be no distinction between the number of jurors in agreement required to convict of a misdemeanor or a felony. If guilt is clearly established, it is believed that the jury will be able to agree to convict. If guilt is not established, and several jurors cannot agree, it is a long established principle of justice that the accused ought not to be convicted. The loss of livelihood and lifetime criminal record occasioned by a criminal conviction are too damaging to permit less than a unanimous verdict.

The remainder of the section is proposed without change.

Section 27. IMPRISONMENT FOR DEBT. No person shall be imprisoned for debt except in the manner prescribed by law, upon refusal to deliver up his estate for the benefit of his creditors, or in cases of tort, where there is strong presumption of fraud.

COMMENTS

The committee voted unanimously to retain former Article III, section 12 unchanged. It was felt that the provision is an adequate safeguard for the right of one in debt to be free from imprisonment. No delegate proposals were received on this provision.

Section 28. RIGHTS OF THE CONVICTED. Laws for the punishment of crime shall be founded on the principles of prevention and reformation and full rights shall be automatically restored upon termination of state supervision for any offense against the state.

COMMENTS

The committee voted unanimously to adopt this revision of former Article III, section 24. In doing so, the committee recommends that once a person who has been convicted has served his sentence and is no longer under state supervision, he should be entitled to the restoration of all civil and political rights, including the right to vote, hold public office, and enter occupations which require state licensing. The committee believes that this is eminently proper and that the paramount concerns of prevention and reformation cannot be realized unless the ex-convict can readily move back into society as an equal participant in community affairs. Surely to rehabilitate one and attempt to insure that he has the opportunity to become a full member of the community requires that he be restored the same rights, privileges and immunities as other citizens. This provision does not speak to the rights of the incarcerated while they are in prison as did delegate proposal #98. It is not meant in any way to preclude them having all rights except those necessarily denied as a condition of their incarceration.

The committee also deleted reference to capital punishment. The reference to capital punishment is not necessary as it merely grants the legislature the power to do something it can do anyway. To delete this reference has no effect on the status of capital punishment in Montana; it remains in effect in those instances which the legislature provides. The committee rejected delegate proposal #3 which would have abolished capital punishment. The committee felt the matter should be left up to the legislature.

> Section 29. EMINENT DOMAIN. Private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made to or paid into court for the owner. In the event of litigation, just compensation shall include necessary expenses of litigation to be awarded by the court when the private property owner is the prevailing party.

COMMENTS

The committee unanimously approved substantive changes in the eminent domain section. The thrust of the committee effort was to assure that full and just compensation be made in all eminent domain actions. Without it, some of the costs of an eminent domain action fall where they do not belong--on the person whose property is being condemned.

In order to give substance to the citizen's effort to challenge the compensation figure of the condemnor, the last sentence of this provision was added. Those testifying in opposition to the committee's original eminent domain proposal agreed that this sentence, which awards necessary expenses of litigation to the

private property owner when he is the prevailing party, is just. The committee intends by necessary expenses of litigation all costs including appraiser fees, attorney fees and court costs. It is felt that this stipulation will produce a climate in which the condemnor's offer for compensation will more adequately reflect the compensation to which a property owner is entitled. The property owner will have a chance to collect the expenses he incurs in challenging the condemnor's decision. In addition, it will redress the imbalance between the vast resources brought to bear by the state and those available to the individual property owner in contested cases. The committee recommends this section to the convention as insurance that the compensation to the private property owner will in fact be just. Delegate proposal #75 was amended to accomplish this provision.

Section 30. TREASON AND DESCENT OF ESTATES. Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court; no person shall be attainted of treason or felony by the legislative assembly; no conviction shall cause the loss of property to the relatives or heirs of the convicted. The estates of suicides shall descend or vest as in cases of natural death.

COMMENTS

The committee voted unanimously to retain the former Article III, section 9 with minor stylistic changes. The limitations on treason prosecutions were retained in their tradition-rooted language verbatim. The provision on "corruption of blood" was replaced with wording expressing the same point: "no conviction shall cause the loss of property to the relatives or heirs of the convicted". The provision on the descent of the estates of suicides was revised for clarity. No delegate proposals were received on this provision.

Section 31. EX POST FACTO, OBLIGATION OF CONTRACTS AND IRREVOCABLE PRIVILEGES. No ex post facto law nor law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislative assembly.

COMMENTS

The committee voted unanimously to retain the former Article III, section 11 unchanged. The protections against ex post facto laws, laws impairing the obligation of contracts and laws granting irrevocable privileges seemed adequate. No delegate proposals were received on this provision.

Section 32. CIVILIAN CONTROL OF THE MILITARY. The military shall always be in strict subordination to the civil power; no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in the manner prescribed by law.

COMMENTS

The committee voted unanimously to retain the former Article III, section 22 unchanged. In doing so, the committee notes the importance of the declaration of the principle that the civilian authority always supersedes that of the military. Although the quartering of troops prohibition has not been at issue for many years, the committee felt it was wise to retain the safeguard. No delegate proposals were received on this provision.

Section 33. IMPORTATION OF ARMED PERSONS. No armed person or persons or armed body of men shall be brought into this state for the preservation of the peace, or the suppression of domestic violence, except upon the application of the legislative assembly, or of the governor when the legislative assembly cannot be convened.

COMMENTS

The committee voted unanimously that the former Article III, section 31 remain unchanged. The protection, initially established to prevent the importation of strike-breakers, is thought to be an adequate safeguard against any body of armed men coming into the state. No delegate proposals were received on this provision.

Section 34. UNENUMERATED RIGHTS. The enumeration in this Constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

COMMENTS

The committee voted unanimously to retain the former Article III, section 30 unchanged. In doing so, the committee notes that this provision--as well as the new rights provisions of this proposal--is a crucial part of any effort to revitalize the state government's approach to civil liberties questions. Activity in recent years indicates that this provision, originally written into the federal Bill of Rights as a sign that there were rights beyond those specifically listed, may be the source of innovative judicial activity in the civil liberties field. [See, e.g. Griswold v. Connecticut, 381 U.S. 479(1965)]. No delegate proposals were received on this provision.

APPENDIX A

CROSS REFERENCES

PROPOSED SECTION	PRESENT ARTICLE & SECTION
1	1
2	2
3	3
4	NEW
5	4
6	26
7	10
8	NEW
9	NEW
10	NEW
11	7
12	13
13	5
14	NEW
15	NEW
16	6
17	27
18	NEW
19	21
20	8
21	19
22	20
23	17
24	16
25	18
26	23
27	12
28	24
29	14
30	9
31	11
32	22
33	31
34	30

APPENDIX B

PROPOSALS CONSIDERED BY COMMITTEE

The following delegate proposals were examined and considered by the Bill of Rights Committee during its deliberations:

Number of Proposal	Chief Sponsor	Subject Matter	Disposition
1. #1	E.M.Berthelson	Environment	Rejected
2. #3	Jerome Cate	Capital punishment	Rejected
3. #4	E.M.Berthelson	Right to Bear arms	Rejected
4. #10	Virginia Blend	Equal Rights	Rejected
5. #12	Jerome Cate	Environmental protection	To Natural Resources
6. #13	Bob Campbell	Rights of 18 year olds	Adopted
7. #14	Bob Campbell	Invasions of privacy	Adopted in part
8. #15	D.A.Scanlin	Indian lands	Adopted
9. #18	Jerome Cate	Right to Counsel	Rejected
10. #20	C.B.McNeil	Quality Environment	To Natural Resources
11. #21	C.B.McNeil	Quality Environment	To Natural Resources
12. #30	Jerome Cate	Sovereign immunity	Adopted in part
13. #32	Mae Nan Robinson	Discrimination	Rejected
14. #33	Bob Campbell	Individual dignity	Adopted
15. #34	Bob Campbell	Restoration of	Adopted

			rights	
16.	#38	Donald Foster	Citizen participation	Adopted
17.	#45	Lyle Monroe	Basic necessities	Adopted in part
18.	#50	Bob Campbell	Equal protection	Rejected
19.	#51	Bob Campbell	Discrimination	Rejected
20.	#55	Jerome Cate	Compensation for victims of crime	Rejected
21.	#57	Dorothy Eck	Rights of Access	Adopted
22.	#59	Bob Campbell	Preamble	Adopted in part
23.	#61	Richard J. Champoux	Equal protection	Adopted in part
24.	#65	Lyle Monroe	Rights of minors	Adopted in part
25.	#67	Donald Foster	Preamble	Adopted in part
26.	#75	Bob Campbell	Eminent domain	Adopted in part
27.	#81	Daniel W. Harrington	Religious liberty	Rejected
28.	#86	George W. Rollins	Preamble	Rejected
29.	#87	Donald Foster	Rights of minors	Rejected
30.	#88	Jerome Cate	Self-incrimination	Rejected
31.	#93	Henry Siderius	Collective bargaining	Rejected
32.	#98	Robert Lee Kelleher	Rights of prisoners	Rejected
33.	#100	Robert Lee Kelleher	Involuntary servitude on Sundays	Rejected

34.	#103	Robert Lee Kelleher	Rights to be born and to die	Rejected
35.	#116	Jack K. Ward	People's obligation to preserve rights	Adopted in part
36.	#118	Jack K. Ward	Preamble	Rejected
37.	#124	Jerome Cate	Prohibition of lie detector tests	Rejected
38.	#125	Jerome Cate	Environmental compensation	Rejected
39.	#132	Bob Campbell	Environment rights	Adopted
40.	#133	Bob Campbell	Permitting full remedies, etc.	Adopted
41.	#151	Lyle Monroe	Rights of Indians	Rejected
42.	#153	David L. Holland	Free care at St. Institutions	Rejected
43.	#160	Lyle Monroe	Rights of Employees	Rejected
44.	#163	Veronica Sullivan	Rights of the Committed	Rejected
45.	#165	Jerome T. Loendorf	Religious taxation	Rejected
46.	#167	Lyle Monroe	Religious freedom	Adopted

APPENDIX C

WITNESSES HEARD BY COMMITTEE

Name - Affiliation - Residence - Subject

1. Duane W. Welker - Individual - Hamilton.

2. Robert E. Miller - Montana Press Association - Helena Freedom of the Press.

3. Robert D. Watt - Montana Student Presidents' Association - Rights of 18 year olds.

4. Gerald L. McCurdy - NHF - Hamilton - In support of good government.

5. Roy G. Crosby, Jr. - Citizens for Constitutional Government - Missoula - Preamble.

6. Carol and Francis Mitchell - Montana Common Cause - Helena - Right to Know.

7. Reverend James H. Provost - Montana Catholic Conference - Helena - Freedom of Religion.

8. Gerald L. McCurdy - NHF - Hamilton - 18 year old rights.

9. John Murphy - Intern - Great Falls - Public Health, Undeclared Wars and the Environment.

10. Francis J. Naucci - Montana Catholic Conference - Great Falls - Freedom of Religion.

11. Steven F. Coldiron - Montana Low-Income Organization - Helena - Delegate Proposal #34, Rights upon termination of state supervision.

12. Roy Crosby, Jr. - Citizens for Constitutional Government - Helena - Rights of Accused.

13. William R. Cainan - Masons - Helena - Article IV.

14. Bonnie Wallem - League of Women Voters of Montana - Helena - should there be a Bill of Rights in the Constitution?

15. Norman D. Ostrander - Seventh Day Adventist Church - Helena - Article IV.

16. Mrs. Irving Boettger - Individual - East Helena - Right to Privacy, Environment.

17. Daniel J. Foley - Lee Newspapers - Helena - Public access and right to privacy.

18. Evelyn Schallaire - Individual - Martin City - Proposal #32.

19. Lewis E. Yearout - Montana Arms Collectors Association - Great Falls - Right to Bear Arms.

20. Dr. H. W. C. Newberry - Individual - Kalispell - Right to Bear Arms.

21. A. Bickstad - Individual - Boulder - Right to Bear Arms.

22. Natalie Cannon - Helena Branch, American Association of University Women - Helena - Discrimination.

23. Maxine Johnson - AAUW - Missoula - Discrimination.

24. Sidney Smith - Department of Labor and Industry - Helena - Human Rights.

25. Elma Peck - Business and Professional Women - Helena - Equal Rights.

26. Bess B. Reed - Montana Federation Women's Clubs - Missoula - Equal Rights.

27. Bernard L. Dan - Individual - Boulder - Right to Bear Arms.

28. Orson Topham - National Association to Keep and Bear Arms - Helena - Right to Bear Arms.

29. Raymond Lay - National Association to Keep and Bear Arms - Helena - Right to Bear Arms.

30. Raymond Boem - Montana Rifle Association - Big Timber - Article III, Section 13.

31. Kenneth Henry - Individual - Helena - Right to Bear Arms.

32. Mavis Scott - Wamubdi-Cta Indian Club - Poplar - Rights of those under the age of majority.

33. Lynn Lueppe - Tatanka Ska Indian Club - Poplar - Rights of those under the age of majority.

34. Vincent P. Matule - Individual - Helena - Childrens' rights.

35. Mrs. Lois K. McMeekin - Individual - Helena - Rights of those under the age of Majority.

36. Mary Anne Fisher - Montana Advisory Council on Children and Youth - Helena - Rights of those under the age of

Majority.

37. Mavis McKelvey - Montana League of Conservation Voters - Missoula - Environmental Protection.

38. Darlene Grove - Individual - Helena - Environment.

39. Cecil Garland - Montana Wilderness Association - Lincoln - Public Trust.

40. William P. Tomlinson - Montana League of Conservation Voters - Missoula - Environmental protection.

41. Robert E. LeProwse - Montana Woodland Council - Missoula - Environment.

42. George Darrow - State Representative, Yellowstone County - Billings - Environmental protection.

43. C. Louise Cross - Individual - Chairman, Natural Resources Committee.

44. C. B. McNeil - Nelson Outdoors - Nelson - Delegate proposals #20 and 21.

45. Leonard Campbell - Environmental Protection Agency - Denver - Environmental protection.

46. Irwin Dickstein - Federal Environmental Protection Agency - Denver - Environmental protection.

47. Robert R. DeSpain - U. S. Environmental Protection Agency - Denver - Environmental protection.

48. Dave Wagoner - Environmental Protection Agency - Denver - Environmental protection.

49. Keith O. Schwab - Environmental Protection Agency - Littleton - Environmental Protection.

50. Barney Reagan - Individual - Helena - Ordinance I, Section 2.

51. Kenneth Henry - Individual - Helena - Article 3, Section 4.

52. Francis Satterthwaite - Inter-tribal Policy Board - Helena - Ordinance I, Section 2.

53. Will Roscoe - Sentinel High School - Missoula - Rights of 18 year olds.

54. Stephen M. Sherick - Sigma Phi Epsilon Fraternity - Missoula - Rights of 18 year olds.

55. Kenneth Henry - Individual - Helena - Euthanasia.

56. Bob Campbell - Delegate - Missoula - Delegate Proposal #13.

57. Jerry Cate - Delegate - Proposal #13.

58. James Tomlinson - Hellgate High School - Missoula - Rights of 18 year olds.

59. Mike Barrett - Hellgate High School - Missoula - Rights of 18 year olds.

60. Kurt Krueger - Individual - Helena - Rights of 18 year olds.

61. Ed Smith - Individual - Missoula - Rights of 18 year olds.

62. William E. Koerner - Individual - Hamilton - Opposing rights of 18 year olds.

63. Joyce M. Franks - Individual - Alberton - Right to die.

64. Carl Rostad - Individual - Helena - Rights of 18 year olds.

65. Mrs. Stella Filipowicz - Individual - Great Falls - Right to live.

66. Bill Turner - Individual - Helena - Capital Punishment.

67. Duane W. Welker - Individual - Hamilton - #45.

68. Frank R. Sennett - Department of Social and Rehabilitation - Services - Helena - #45.

69. Carol Mitchell - Individual - Helena - Basic Rights.

70. Jack R. Carlson - Montana Chapter, National Association Social Workers - #45.

71. Larry Juelfs - Invited by Committee - Great Falls - #45.

72. Jim Raniere - Welfare Rights Organization - Great Falls - #45.

73. Malyn Oleson - Welfare Rights Organization - Great Falls - #45.

74. Doris Flesch - Welfare Rights Organization - Great Falls - #45.

75. Minnie McReynolds - Welfare Rights Organization - Great

Falls - #45.

76. Shirley Malkuck - Welfare Rights Organization - Great Falls - #45.

77. Irene Houle - Welfare Rights Organization -Great Falls - #45.

78. Sister Providencia - The Church and Academic Communities - #45.

79. Steven Coldiron - Montana State Low Income Organization Helena - #45.

80. Kenneth Henry - Individual - Helena - Eutnanasia.

81. Larry Elisch - Individual - Missoula - Right of Privacy.

82. Gerald L. McCurdy - Individual - Hamilton - Basic Necessities.

83. Jim Dana - Individual - Missoula - #45.

84. Patricia A. Denny - Individual - Missoula - Education.

85. Bob Sorenson - ASOM - Missoula - Education.

86. Tom Bailey - Individual - Missoula - School Boards.

87. John Murphy - Individual - Missoula - Various.

88. Leroy F. Berven - Associated Students of University of Montana - Education.

89. Frank LaMere - Eastern Montana College - Billings - Indian Education.

90. Dale Kindness - Eastern Montana College - Billings - Indian Education.

91. Clara Lee McMakin - Eastern Montana College - Lamedeer - Indian Education.

92. Calvin B. Herrera - Eastern Montana College - Indian Education.

93. Stan Juneau - Eastern Montana College - Billings - Indian Education.

94. John B. Christensen - University of Montana - Missoula - Education.

95. Wayne Gildroy - Montana Student Presidents' Assn. - Bozeman - #142.

96. Frank Dudas - ASMSU - Bozeman - Education.

97. Robert Jovick - Montana Student Presidents' Assn. - Bozeman - Education.

98. Harold E. Gray - University of Montana - Missoula - Equal educational opportunity.

99. Dwight A. Billedeaux - American Indian - Billings - Education.

100. Gary Kimble - Indians - Missoula - Indian Rights.

101. Willis M. McKeon - Montana Associated Utilities - Malta - #75 and #125.

102. Charles C. Lovell - Great Falls Gas Co. - Great Falls - #75 and #125.

103. John Carl - Montana Power Co. - Butte - #75.

104. Donald A. Douglas - Dept. of Highways - Helena - #75 and #125.

105. George Darrow - Representative - Billings - #75.

106. John B. Staigmiller - Individual - Cascade - Eminent Domain.

107. Edwin S. Booth - Montana Railroad Assn. - Helena - #75.

108. Gene A. Picotte - General Telephone of the N.W. and Montana-Dakota Utilities - Helena - #75 and #125.

109. Mike Meloy - Privacy and wiretapping.

110. Kayle Jackson - Individual - Bozeman - Search and Seizure.

111. Lewis E. Yearout - Montana Arms Collectors Association - Great Falls - Proposal #4.

112. H. W. C. Newberry - Individual - Kalispell - Right to keep and bear arms.

113. Dr. George Osterman - Individual - Great Falls - Proposal #4.

114. Robert D. McDonald - Individual - Helena - Concealed Weapons.

115. Raymond Lay - National Association to Keep and Bear Arms - Helena - Gun registration and taxation.

116. Charles I. Bartelt - Individual - Great Falls - Gun registration.

117. Don Osburn - Cascade County Wildlife Association - Great Falls - Gun control.

118. Orsen Topham - National Association to Keep and Bear Arms - Helena - Proposal #4.

119. Daniel J. Masse - Montana Rifle and Pistol Association - Treasure State Outfitters - Clinton - Proposal #4.

120. Dan Neal - Beartooth Mountain Men - Muzzle Loaders - Great Falls - Right to keep and bear arms.

121. Dorothy Bradley - State Representative - Gallatin - Public trust.

122. Patti Meier - GASP of Missoula - Grant Creek - Environmental Rights.

123. Cecil Garland - Individual - Lincoln - Public trust.

124. Joe Roberts - Individual - University of Montana Law School - Right to die.

125. Francis Mitchell - Montana Common Cause.

126. Sister Providencia - Individual - College of Great Falls - Capital Punishment.

127. Miss Gerry Fenn - Montana Advisory Council on Children - Helena - Rights of those under the age of majority.

128. Jim Pippard - Community Coordinated Child Care - Helena - Rights of those under the age of majority.

129. Earl J. Barlow - Indian Education Supervisor - Helena - Indian education.

130. George Darrow - Individual - Billings - Comments on sections 1, 4 and 14.

131. Robert D. Watt - Montana Student Presidents' Association - Missoula - Helena - Adult rights.

132. Martin L. Staley - Individual - Wolf Creek - Rights of majority to 18 year olds, with restrictions.

133. Noel Larivee - Missoula - Individual - Right to know.

134. Don Holtz - Montana Common Cause - Helena - Right to know.

135. Bonnie Wallem - League of Women Voters of Montana - Helena

- Clean environment, right to know.

136. Ray Gulick - Individual - Joplin - Brief history of the present Montana State Constitution.

137. William Derry, Sr. - Montana Inter-Tribal Policy Board - Box Elder, Montana - Indian Rights.

138. Carson Boyd - Montana Inter-Tribal Policy Board - Brockton - Indian Rights.

APPENDIX D

ROLL CALLS ON PROPOSAL

MEMBER	SECTION/Pre.	1	2	3	4	5	6	7	8	9	10	11	12	TOTAL Y	TOTAL N	TOTAL A
Wade J. Dahood, Ch.	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Chet Blaylock, V. Ch.	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Bob Campbell	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Dorothy Eck	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Donald R. Foster	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
R. S. (Bob) Hanson	Y	Y	N	N	Y	Y	Y	Y	Y	N	Y	Y	Y	9	3	0
George H. James	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Rachell K. Mansfield	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Lyle R. Monroe	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Marshall Murray	Y	Y	Y	N	Y	Y	Y	Y	Y	N	Y	Y	Y	10	2	0
Veronica Sullivan	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
TOTAL Yea	11	11	10	9	11	11	11	11	11	9	11	11	11			
TOTAL Nay	0	0	1	2	0	0	0	0	0	2	0	0	0			
TOTAL Absent	0	0	0	0	0	0	0	0	0	0	0	0	0			

APPENDIX D

ROLL CALLS ON PROPOSAL

MEMBER SECTION	13	14	15	16	17	18	19	20	21	22	23	24	25	TOTAL Y	TOTAL N	TOTAL A
Wade J. Dahood, Ch.	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Chet Blaylock, V. Ch.	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Bob Campbell	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Dorothy Eck	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Donald R. Foster	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
R. S. (Bob) Hanson	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
George H. James	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Rachell K. Mansfield	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Lyle R. Monroe	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
Marshall Murray	Y	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	10	2	0
Veronica Sullivan	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	12	0	0
TOTAL Yea	11	10	10	11	11	11	11	11	11	11	11	11	11			
TOTAL Nay	0	1	1	0	0	0	0	0	0	0	0	0	0			
TOTAL Absent	0	0	0	0	0	0	0	0	0	0	0	0	0			

APPENDIX D

ROLL CALLS ON PROPOSAL

MEMBER	SECTION 26	27	28	29	30	31	32	33	34					TOTAL Y	N	A
Wade J. Dahood, Ch.	Y	Y	Y	Y	Y	Y	Y	Y	Y					9	0	0
Chet Blaylock, V. Ch.	Y	Y	Y	Y	Y	Y	Y	Y	Y					9	0	0
Bob Campbell	Y	Y	Y	Y	Y	Y	Y	Y	Y					9	0	0
Dorothy Eck	Y	Y	Y	Y	Y	Y	Y	Y	Y					9	0	0
Donald R. Foster	Y	Y	Y	Y	Y	Y	Y	Y	Y					9	0	0
R. S. (Bob) Hanson	Y	Y	Y	Y	Y	Y	Y	Y	Y					9	0	0
George H. James	Y	Y	Y	Y	Y	Y	Y	Y	Y					9	0	0
Rachell K. Mansfield	Y	Y	Y	Y	Y	Y	Y	Y	Y					9	0	0
Lyle R. Monroe	Y	Y	Y	Y	Y	Y	Y	Y	Y					9	0	0
Marshall Murray	Y	Y	Y	Y	Y	Y	Y	Y	Y					9	0	0
Veronica Sullivan	Y	Y	Y	Y	Y	Y	Y	Y	Y					9	0	0
TOTAL Yea	11	11	11	11	11	11	11	11	11							
TOTAL Nay	0	0	0	0	0	0	0	0	0							
TOTAL Absent	0	0	0	0	0	0	0	0	0							

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

PUBLIC HEALTH, WELFARE, LABOR

AND INDUSTRY COMMITTEE PROPOSAL

No. IX

Date Introduced: February 19, 1972

/s/ George B. Heliker, Chairman

/s/ J. K. Ward, Vice Chairman

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Date: February 19, 1972

To: MONTANA CONSTITUTIONAL CONVENTION

From: Public Health, Welfare, Labor and Industry Committee

Ladies and Gentlemen:

The Public Health, Welfare, Labor and Industry Committee respectfully submits proposed new articles on Non-municipal Corporations, Labor, and Institutions and Assistance. The Non-municipal Corporation and the Labor Articles are intended to replace present Articles XV and XVIII respectively. The Institutions and Assistance Article is intended to replace section 1 and 5 of the present Article X.

The committee resolved most of the issues before it without strong dissent. However, minority reports are being filed on the subjects of public utility regulation, right-to-work, and rights of employee organization for collective bargaining.

In signing either a majority or a minority report, a committee member does not necessarily endorse all statements contained therein. Rejection, by the committee, of proposals does not necessarily imply that the committee finds them inherently undesirable unless it expressly so states.

The committee wishes to express its gratitude to all Delegates and members of the public who offered their advice on subjects before the committee.

The committee enjoyed the services of the following persons

in addition to its members and now gratefully acknowledges their unstinting labors and loyalty to the goal of assisting the committee to make the best contribution of which it is capable to the writing of a new Constitution: Richard E. Spall, Research Analyst; Kandice Haun and George Mahoney, Interns; and our excellent secretary, Sylvia Kinsey.

/s/ George B. Heliker
Chairman

/s/ J. K. Ward
Vice Chairman

MAJORITY PROPOSAL

BE IT PROPOSED BY THE PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY COMMITTEE:

That there be a new Article on Non-municipal Corporations to read as follows:

ARTICLE ___

NON-MUNICIPAL CORPORATIONS

Section 1. GRANT OF POWER. Corporate charters shall be granted, modified, or dissolved only pursuant to general law.

Section 2. PROTECTION FOR CITIZENRY. The legislative Assembly shall provide for protection and education for the people against harmful and unfair practices by either foreign or domestic corporations, individuals, or associations.

Section 3. CUMULATIVE VOTING. All elections for directors or trustees of incorporated companies shall provide all stockholders the right to vote by person or proxy the number of shares of stock owned by him for as many directors or trustees as are to be elected, or to cumulate the shares, and give a candidate as many votes as the number of directors multiplied by the number of his shares, or to distribute them in similar manner among as many candidates as he sees fit.

Section 4. LONG-SHORT HAUL CLAUSE. No transportation company shall be allowed to charge, under penalties which the legislative assembly shall prescribe, any greater charge for the transportation of freight or passengers to any place upon its route, than it charges for the transportation of the same class of freight or passengers to any more distant place upon its route within this state.

Section 5. WATERED STOCK PROVISION. No corporation shall issue stocks or bonds, except for labor done, services performed, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock of corporations shall not be increased except in pursuance of general law, nor without consent of those persons holding a majority of the stock first obtained at a meeting held after notice given in pursuance of law.

Section 6. RETROSPECTIVE LAW PROHIBITION. The legislative assembly shall pass no law retrospective in its operations which imposes on the people a new liability in respect to transactions or considerations already passed.

/s/ George E. Heliker
Chairman

/s/ J. K. Ward
Vice Chairman

/s/ Charles H. Mahoney

/s/ P. J. Studer

/s/ Joseph McCarvel

/s/ W. H. Swanberg

/s/ D. A. Scanlin

/s/ Edith Van Ruskirk

COMMENTS ON MAJORITY PROPOSAL

ARTICLE XV NON-MUNICIPAL CORPORATIONS

Section 1. GRANT OF POWER. Corporate charters shall be granted, modified, or dissolved only pursuant to general law.

COMMENTS

In addition to providing for a general grant of legislative power for corporate charter granting, section 1 provides:

(a) a prohibition on chartering corporations by special law, and

(b) the intent that corporate bodies are subject to dissolution in the event their principle activity is contrary to promotion of the general welfare.

Section 2. PROTECTION FOR CITIZENRY. The legislative Assembly shall provide for protection and education for the people against harmful and unfair practices by either foreign or domestic corporations, individuals, or associations.

COMMENTS

The committee intends this section to encompass and prohibit various business practices which are deemed harmful and injurious to the people. Included in the prohibition are various business practices, such as:

(a) arbitrary discrimination in rate and service for transportation,

(b) the receipt of greater rights and privileges by foreign corporations than are granted to domestic corporations,

(c) price-fixing and regulation of production on an intrastate basis which is harmful to the state economy,

(d) any act which is generally not conducive to efficiently allocating scarce resources.

Section 3. CUMULATIVE VOTING. All elections for directors or trustees of incorporated companies shall provide all stockholders the right to vote by person or proxy the number of shares of stock owned by him for as many directors or trustees as are to be elected, or to cumulate the shares, and give a candidate as many votes as the number of directors multiplied by the number of his shares, or to distribute them in similar manner among as many candidates as he sees fit.

COMMENTS

The intent of this section is to maintain voting protection for the minority stockholder.

Section 4. LONG-SHORT HAUL CLAUSE. No transportation company shall be allowed to charge, under penalties which the legislative assembly shall prescribe, any greater charge for the transportation of freight or passengers to any place upon its route, than it charges for the transportation of the same class of freight or passengers to any more distant place upon its route within this state.

COMMENTS

Recognizing that federal law and state statutes do not prohibit this discriminatory practice, the committee retains this section for intrastate purposes.

Section 5. WATERED STOCK PROVISION. No corporation shall issue stocks or bonds, except for labor done, services performed, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock of corporations shall not be increased except in pursuance of general law, nor without consent of those persons holding a majority of the stock first obtained at a meeting held after notice given in pursuance of law.

COMMENTS

Although the committee recognizes the statutory nature of this section, it feels that the possibility, no matter how remote, of future legislative action removing this from the statutes warrants retention of this section in the Constitution.

Section 6. RETROSPECTIVE LAW PROHIBITION. The legislative assembly shall pass no law retrospective in its operations which imposes on the people a new liability in respect to transaction or considerations already passed.

COMMENTS

In expanding the prohibition on retrospective law, the committee intends to preserve for all citizens the sanctity of contractual obligations from the actions of a third party, i.e., the state.

MAJORITY PROPOSAL

BE IT PROPOSED BY THE PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY COMMITTEE:

That there be a new Article on labor to read as follows:

ARTICLE ___

LABOR

Section 1. DEPARTMENT AND COMMISSIONER. The legislative Assembly shall provide for a Department of Labor and Industry. The Department shall be under the control of a Commissioner appointed by the Governor, confirmed by the legislature (Senate).

/s/ George B. Heliker
Chairman

/s/ J. K. Ward
Vice Chairman

/s/ T. J. Bruder

/s/ Joseph B. McCarvel

/s/ W. F. Swanberg

/s/ L. A. Scanlin

/s/ Edith Van Buskirk

MAJORITY PROPOSAL

BE IT PROPOSED BY THE PUBLIC HEALTH, WELFARE, LABOR, AND INDUSTRY COMMITTEE:

That there be a new section in the Labor Article to read as follows:

ARTICLE ___

LABOR

Section 2. MERIT SYSTEM. The legislative Assembly shall establish a system under which the merit principle will govern the employment of persons by the state.

/s/ George B. Heliker
Chairman

/s/ Joseph McCarvel

/s/ R. J. Studer

/s/ D. A. Scanlin

/s/ Edith Van Buskirk

COMMENTS ON MAJORITY PROPOSAL

ARTICLE XVIII LABOR

Section 1. DEPARTMENT AND COMMISSIONER. The Legislative Assembly shall provide for a Department of Labor and Industry. The Department shall be under the control of a Commissioner appointed by the Governor, confirmed by the legislature (Senate).

COMMENTS

The proposed article retains from the present Constitution only an abbreviation of section one. Sections two to five, inclusive, are deleted. The proposal retains a Constitutional Department of Labor, but deletes the requirement that it be located at the capitol. The proposal retains the Constitutional office of Commissioner, but deletes reference to a specific term. It retains the requirement that the Commissioner be confirmed by the Legislative Assembly (Senate). The committee believes that this is as far as we should go in restricting the legislature's discretion with respect to this office. It is our intention that the legislature may leave the commissioner subject to removal by the governor at his pleasure or may, in its discretion, provide a definite term of office and/or require that he be removable only for cause. As under the present Constitution the powers and duties of the commissioner are left for legislative specification.

Delegate Mahoney disserts with respect to the deletion of the specific term for the Commissioner of Labor.

Deletion of section two and section three of the present Constitution is recommended because we do not consider the subject matter to be of sufficient importance to warrant Constitutional treatment in the absence of evidence suggesting the legislature may be unwilling or unable to act upon any problems that exist or may arise within the areas covered by those existing sections.

Deletion of section four of the present Constitution is recommended because it is defective in its present form since an employee who works more than eight hours per day violates the Constitution as much as the employer who requires or induces him to do so, among the consequences of which fact is that workers injured while working in excess of eight hours in one day have been denied standing in the courts to prosecute civil actions against negligent tort feasors. Any suggested language to remedy that defect creates new problems. For example, the clause "and except when an employee voluntarily agrees to work longer than the prescribed eight hours," has been suggested. That language would remove practically all protection for workers in non-union situations, whereas it may be argued that the worker under union-management contract needs no such protection. Furthermore,

the majority feels that a Constitutional eight-hour day may interfere with desirable experimentation with combinations of longer days and shorter weeks, which is in fact now occurring. The majority is also in doubt whether the section has had enough positive practical effect over the many years it has been in the Constitution to justify its continuance. Both the Legislative Council report of 1968 and the Constitutional Revision Commission subcommittee report of 1969 recommended its deletion. While we are cognizant of the importance attached to the section by some citizens, and while we would not be adverse to retaining it if the problems inherent in it could be solved, we now believe that wisdom dictates freeing the legislature to deal with the issue.

With the removal of sections two, three and four, section five is clearly unnecessary.

Section 2. MERIT SYSTEM. The legislative Assembly shall establish a system under which the merit principal will govern the employment of persons by the state.

MAJORITY COMMENTS

The committee believes that efficient government requires adoption by the legislature of a merit system. Since 1921 the legislature has attempted, and failed, to provide such a system. It is the committee's purpose, in recommending adoption of Delegate Proposal 144, to encourage the legislature to get on with the job.

MINORITY COMMENTS

This would be a new Constitutional provision. The minority believes that insufficient time was devoted to this subject by the committee, and the evidence introduced too fragmentary and inconclusive to warrant the inclusion of this article in the Constitution. We believe the matter is primarily legislative and we wish to report that a senate subcommittee now has this matter under consideration.

MAJORITY PROPOSAL

BE IT PROPOSED BY THE PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY COMMITTEE:

That there be a new article on Institutions and Assistance to read as follows:

ARTICLE ___

INSTITUTIONS AND ASSISTANCE

Section 1. INSTITUTIONS. Such institutions as the public good may require shall be established and supported by the state as may be prescribed by law.

Section 2. ASSISTANCE. It shall be the duty of the Legislative Assembly to provide economic assistance and social and rehabilitative services as may be necessary for those inhabitants who, by reason of age, infirmities or misfortune may have need for the aid of society.

/s/ George B. Heliker
Chairman

/s/ J. K. Ward
Vice Chairman

/s/ Charles Mahoney

/s/ R. J. Studer

/s/ Joseph H. McCarvel

/s/ W. H. Swanberg

/s/ D. A. Scanlin

/s/ Edith Van Buskirk

COMMENTS ON MAJORITY PROPOSAL

ARTICLE X INSTITUTIONS AND ASSISTANCE

Section 1. INSTITUTIONS. Such institutions as the public good may require shall be established and supported by the state as may be prescribed by law.

COMMENTS

The section as amended deletes specific mention of several institutions set forth in the existing section. It was the feeling of the committee that no special purpose is served by the specific mention of these institutions in as much as a general delegation of authority should be sufficient.

Section 2. ASSISTANCE. It shall be the duty of the legislative assembly to provide economic assistance and social and rehabilitative services as may be necessary for those inhabitants who, by reason of age, infirmities or misfortune may have need for the aid of society.

COMMENTS

The original section placed the burden of taxation upon the several counties of the state to provide by tax levy for their indigents. The proposed section changes this to provide that the legislative assembly shall decide where this tax burden should rest, counties as at present or a state wide levy, or some combination thereof. The testimony taken on this matter showed conclusively that welfare recipients tend to congregate in the larger cities of our state, partly because of better job opportunities, and partly because of better welfare facilities. It was shown that the welfare recipients from the smaller counties tend to gather in Great Falls, Anaconda, Butte, Missoula, Billings, etc., imposing a disproportionate burden on the taxpayers of these counties. The proposed section would allow the legislature to place this burden on a state wide basis if it so chose and thus correct this inequity. Your committee considered the possibility of providing that it would be "the duty of the State to provide economic assistance . . . .", but we believed that this would be equally as restrictive as the existing section and believe the matter should be one for legislative discretion.

MINORITY PROPOSAL

BE IT PROPOSED BY THE PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY COMMITTEE:

That there be a new Article on Regulation of Public Utilities to read as follows:

ARTICLE ___

REGULATION OF PUBLIC UTILITIES

Section 1. PUBLIC UTILITIES COMMISSIONER. A public utilities commissioner shall be appointed by the governor, and confirmed by the legislature (Senate) after public hearings, for a term of four years which shall coincide with the governor's term of office. A vacancy shall be filled for the remainder of the unexpired term in the same manner. The governor may at any time remove the commissioner for any cause deemed by him sufficient, after such public hearing as may be provided by law.

Section 2. POWERS OF COMMISSIONER. The commissioner shall have such jurisdiction and such legislative, executive and judicial powers as are conferred upon him by the legislature and this Constitution, which are cognate and germane to the regulation of public utilities as defined by law. In the exercise of such powers, one of which shall be the determination of rates and tariffs of the utilities over which he may be given jurisdiction, the commissioner shall not be required in considering evidence presented before him to consider any particular theories or methods for determining such rates and tariffs, and such rates and tariffs shall be just and reasonable. The commissioner shall determine the weight and credibility of any evidence that is introduced. The manner and scope of review, if any, of the commissioner's actions in a court of record shall be provided by law.

Section 3. IMPARTIALITY OF STAFF. In the determination of rates and tariffs the commissioner shall be provided with staff personnel and help in such determination, and recommendations of the staff shall be regarded as impartial as opposed to the partiality of the applicant or the protestant.

Section 4. DUTY TO REPRESENT CUSTOMERS. The commissioner shall represent the customers of any public utility and the public generally in all controversies respecting rates, valuations, service and all matters over which he may be given jurisdiction and he shall make use of the jurisdiction and powers of his office to protect such customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at just and reasonable rates.

Section 5. DIVISION OF REGULATORY POWER PROHIBITED. No power to regulate any public utility in respect of rates, tariffs, service, finance, or any other aspect whatsoever of the management and operation of such enterprises as may be necessary or ancillary to the regulation of rates and tariffs thereof, shall be conferred on any other official or agency, but separate divisions under the commissioner, corresponding to separate regulated industries or industry groups, may be prescribed by law.

/s/ George E. Peliker

/s/ Joseph McCarvel

COMMENTS ON MINORITY PROPOSAL

REGULATION OF PUBLIC UTILITIES

Section 1. PUBLIC UTILITIES COMMISSIONER. A public utilities commissioner shall be appointed by the governor, and confirmed by the legislature (Senate) after public hearings, for a term of four years which shall coincide with the governor's term of office. A vacancy shall be filled for the remainder of the unexpired term in the same manner. The governor may at any time remove the commissioner for any cause deemed by him sufficient, after such public hearing as may be provided by law.

MINORITY COMMENTS

Section 1 replaces the existing statutory three-man elected Railroad and Public Service Commission with a single appointed commissioner. The proposed reform is modelled on the system used since 1932 in the state of Oregon with generally recognized success from the standpoint of both regulated companies and the public. It is also influenced by the findings and recommendations of the President's Advisory Council On Executive Organization (the "Ash Council") released by President Nixon on February 11, 1971. The members of that Council were Roy L. Ash, President of Litton Industries; George P. Baker, former Dean of the Harvard University Graduate School of Business Administration; John B. Connally, presently Secretary of the Treasury; Frederick R. Kappel, former Chairman of the board of Directors of AT&T; Richard M. Paget, President of Cresap, McCormick and Paget, Inc., a management consulting firm; and Walter N. Thayer, President of Whitney Communication Corporation. (Mr. Baker did not participate in the study and Mr. Kappel dissented from its major recommendations). The Council studied the Civil Aeronautics Board, the Federal Communications Commission, the Federal Maritime Commission, the Federal Power Commission, the Federal Trade Commission, the Interstate Commerce Commission, and the Securities and Exchange Commission. The Council recommended restructuring and combining the seven agencies into five, four of which would be headed by single commissioners. The latter recommendation was based on the finding that single administrators would enable the agencies to attract and retain highly qualified personnel and increase accountability to both the President and Congress and enhance the efficiency of administration.

In most states, as in Montana, the multi-member regulatory commissions, whether appointed or elected, have proven ineffective at best. The attempt to "insulate" regulation from "politics" has resulted in freeing the regulators from accountability to the public whose interest they are charged with protecting, but it has not "insulated" them from overwhelming pressures from the powerful corporations whose rates and service they supposedly supervise. In fact, it is axiomatic among professional students

of utility regulation that the "regulators" have long since become the "regulated."

The minority of this committee is convinced, after hearing testimony from highly placed officials and counsel of almost all of the important "regulated" monopolies in Montana, that their customers would be as well off, as they are now, if regulation were to be abolished altogether. We are persuaded that the existing regulatory process is but an elaborate sham-battle, a sort of Roman bread-and-circus game in which the monopolies get the bread and the consumer pays for the circus. The upshot of the whole sorry spectacle is that the corporations secure the imprimatur of the state for rates no higher than they would have set entirely on their own initiative. In dreary near-unanimity, witnesses for the monopolies agreed that in the procedures, regulations, structure, method of selection, and the law under which the Montana commission came into existence and operates, "all is for the best in the best of possible worlds." They admit one exception to the rule: they agree it would be better if the taxpayers would ante up more money for a larger commission staff, so their rate applications could be approved with less delay.

The minority is convinced that the Montana rate-payer will never get fair treatment under the present multi-member elected-commission system because it is literally impossible for the election process to attract and select more than an occasional qualified, competent and dedicated commissioner. The electorate simply does not have the opportunity to acquaint itself with the qualifications of the commission candidate running as one among a crowd of candidates for various and sundry state, city, and county offices. The result is that not only does the average voter know little or nothing of the commissioners' qualifications, but also not one in ten thousand even know the commissioners' names. The minority believes now is the time to put an end to this disgraceful charade.

At the same time, the minority was persuaded by the testimony (and perhaps by other recent events) that it would be unwise not to give the commissioner a substantial measure of independence of the governor. In this respect, our proposal is also modelled on the Oregon experience, but we have added the requirement of legislative confirmation.

We believe there is a clear movement toward greater accountability of regulatory agencies to the people through the chief executive, and toward focusing attention and responsibility on one man. We believe Montana should be a leader in this movement.

> Section 2. POWERS OF COMMISSIONER. The commissioner shall have such jurisdiction and such legislative, executive and judicial powers as are conferred upon him by the legislature and this Constitution, which are cognate and germane to the regulation of public utilities as defined by law. In the exercise of such powers,

one of which shall be the determination of rates and tariffs of the utilities over which he may be given jurisdiction, the commissioner shall not be required in considering the evidence presented before him to consider any particular theories or methods for determining such rates and tariffs, and such rates and tariffs shall be just and reasonable. The commissioner shall determine the weight and credibility of any evidence that is introduced. The manner and scope of review, if any, of the commissioner's actions in a court of record shall be provided by law.

COMMENTS

The history of regulatory law is too lengthy and complex to be set forth adequately in any space less than a large book. We can only say here that Montana utility regulation has muddled along under the burden of law labeled obsolete by the United States Supreme Court more than a generation ago. The leading Montana case, Tobacco River Power Co. v. Public Service Commission (109 Mont. 521; 1940) was an accurate statement of the law as enunciated by the U.S. Supreme Court up until that time. But only two years later that Court handed down the first of a series of decisions (generally known as the Natural Gas Cases) in Natural Gas Pipeline Co. v. Federal Power Commission (315 U.S. 575; 1942) which revolutionized regulatory law as interpreted by that court. See also FPC v. Hope Natural Gas Co. (320 U.S. 591;1944). Many other state supreme courts followed the lead of the federal court, as did, for example, the Utah Supreme Court in Utah Power and Light Co. v. Public Service Commission (107 Utah 155; 1944), and freed their state regulatory bodies from the shackles of the arcane "fair value" rule. The Montana Supreme Court chose, in State, ex rel Olson v. Public Service Commission (131 Mont. 272; 1957), to keep the Montana commission in the dark ages of regulatory law, and testimony before this committee was virtually unanimous that the Montana commission is in fact bound to the fair value rule until the law is changed by the Supreme Court, the legislature, or this Convention. (cf. James V. Bottomly, "'Fair Value' test in Montana Public Utility Rate Regulations," 22 Mont. L. Rev. 65; Fall, 1960). It is the minority's belief that the first two are not likely to act. It is the minority's belief that this Convention should act -- for the people.

The specific language of proposed section 2 is designed to free the commissioner to exercise his best judgment, to weigh the evidence subject to no court-imposed theories, save only that the result be "just and reasonable" -- the standard imposed by the U.S. Supreme Court, to which he would be held by the court in any case. Otherwise, the section preserves the legislature's full discretionary power to define the commissioner's powers and jurisdiction, and to define the meaning of "public utility." The last two sentences of section two are designed to prevent the courts from substituting their judgment for the commissioner's, so long as they find the result of his deliberations "just and

reasonable" and arrived at in a manner not contrary to procedural due process of law; and to empower the legislature to restrict judicial review of the commissioner's actions, if it so chooses.

Section 3. IMPARTIALITY OF STAFF. In the determination of rates and tariffs the commissioner shall be provided with staff personnel and help in such determination, and recommendations of the staff shall be regarded as impartial as opposed to the partiality of the applicant or the protestant.

COMMENTS

Without a staff adequate in numbers and capability no regulatory agency can hope to be effective. On this everyone is agreed. The staff should be independent and impartial, characteristics which should be (must be) insured by a merit system. Their work and their recommendations must be the foundation, the sine qua non, of capable regulation, and they should be given the standing of impartial experts.

Section 4. DUTY TO REPRESENT CUSTOMERS. The commissioner shall represent the customers of any public utility and the public generally in all controversies respecting rates, valuations, service and all matters over which he may be given jurisdiction and he shall make use of the jurisdiction and powers of his office to protect such customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at just and reasonable rates.

COMMENTS

Section 4 sets forth the basic philosophy of regulation. Public utilities are regulated because they are monopolies unregulated by a free competitive market. Without stringent regulation, the consumer is defenseless against exploitation by monopoly power. Regulation is necessary on the customer's behalf. It goes without saying that it is also in the consumer's interest that the utility company be allowed rates sufficient to insure adequate service.

Section 5. DIVISION OF REGULATORY POWER PROHIBITED. No power to regulate any public utility in respect of rates, tariffs, service, finance, or any other aspect whatsoever of the management and operation of such enterprises as may be necessary or ancillary to the regulation of rates and tariffs thereof, shall be conferred on any other official or agency, but separate divisions under the commissioner, corresponding to separate regulated industries or industry groups, may be prescribed by law.

COMMENTS

The purpose of this section is to maintain the principle of concentration of responsibility in the interest of promoting accountability, while permitting flexibility in compartmentalizing the staff divisions along logical economic dividing-lines.

* * *

MINORITY GENERAL COMMENTS

In the view of the minority, the foregoing proposal meets all the criteria of subject matter suitable for inclusion in our Constitution. Admittedly, it is also statutory in several senses: (1) the present system was established by law in 1913; (2) what is sought to be accomplished by this proposal could be accomplished by statute; (3) part of the proposal is modeled on the Oregon statute. On the other hand, the Montana legislature has refused to act despite the pleas of beleaguered rate-payers, session after session after session. And always for the same reason: the power of the monopolies' lobby, which, with unlimited funds provided by the rate-payers and the best hired legal and public relations minds, has ridden roughshod over the legislature. They have played the legislature like a master organist plays his instrument. They know where all the stops are located and they know how to pull them. For them the stakes are high. For the consumers they are equally high but spread among 800,000 unorganized people.

This subject is important to this state - both economically and politically. It is a subject of enduring character. The alternative means to deal with it are not to be trusted. It is, therefore, a Constitutional issue. We represent the people. Let us act for the people.

COMMENTS ON MINORITY PROPOSAL

REGULATION OF PUBLIC UTILITIES

ARTICLE ___

REGULATION OF PUBLIC UTILITIES

Section 1. PUBLIC UTILITIES COMMISSIONER. A public utilities commissioner shall be appointed by the governor, and confirmed by the legislature (Senate) after public hearings, for a term of four years which shall coincide with the governor's term of office. A vacancy shall be filled for the remainder of the unexpired term in the same manner. The governor may at any time remove the commissioner for any cause deemed by him sufficient, after such public hearing as may be provided by law.

Section 2. POWERS OF COMMISSIONER. The commissioner shall have such jurisdiction and such legislative, executive and judicial powers as are conferred upon him by the legislature and this Constitution, which are cognate and germane to the regulation of public utilities as defined by law. In the exercise of such powers, one of which shall be the determination of rates and tariffs of the utilities over which he may be given jurisdiction, the commissioner shall not be required in considering evidence presented before him to consider any particular theories or methods for determining such rates and tariffs, and such rates and tariffs shall be just and reasonable. The commissioner shall determine the right and credibility of any evidence that is introduced. The manner and scope of review, if any, of the commissioner's actions in a court of record shall be provided by law.

Section 3. IMPARTIALITY OF STAFF. In the determination of rates and tariffs the commissioner shall be provided with staff personnel and help in such determination, and recommendations of the staff shall be regarded as impartial as opposed to the partiality of the applicant or the protestant.

Section 4. DUTY TO REPRESENT CUSTOMERS. The commissioner shall represent the customers of any public utility and the public generally in all controversies respecting rates, valuation, service and all matters over which he may be given jurisdiction and he shall make use of the jurisdiction and powers of his office to protect such customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at just and reasonable rates.

Section 5. DIVISION OF REGULATORY POWER PROHIBITED. No power to regulate any public utility in respect of rates, tariffs, service, finance, or any other aspect whatsoever of the management and operation of such enterprises as may be necessary or ancillary to the regulation of rates and tariffs thereof, shall be conferred on any other official or agency, but separate divisions under the commissioner, corresponding to separate regulated industries or industry groups, may be prescribed by law.

MAJORITY COMMENTS

The majority wishes to express the reasoning behind their rejection of the Article on Public Utility Regulation. The following are significant reasons, among others, which committed the majority to their position:

Public Utilities. Your committee considered voluminous testimony on Delegate Proposal 76 which would provide a Constitutional Article for the regulation of public utilities. The majority of this committee voted that this proposal be not adopted for the following reasons:

1. That the matter contained therein is primarily legislative in nature.

2. That the establishment of a single commissioner appointed by the Governor was, in any event, experimental in nature; there has been only two states in the country who have used this system and while it might have some desirable features, the Constitution is no place for such an innovative proposal and one which represents such a radical departure from our present elected three-man commission.

3. The majority feels that little evidence was presented before the committee that indicates the present system of utility regulation is not working satisfactorily. It is perhaps understaffed, but this is a legislative problem.

MINORITY PROPOSAL

BE IT PROPOSED BY THE PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY COMMITTEE:

There shall be a new Constitutional section to read as follows:

Section ___. Any county or municipal subdivision of the state has the power and authority to establish public corporations for the maintenance and operation of utilities, subject to regulations prescribed by law.

/s/ George E. Feliker

/s/ Edith Van Buskirk

/s/ D. A. Scanlin

COMMENTS ON MINORITY PROPOSAL

DELEGATE PROPOSAL #121

Section ___. PUBLIC UTILITY CORPORATIONS. Any county or municipal subdivision of the state has the power and authority to establish public corporations for the maintenance and operation of utilities, subject to regulations prescribed by law.

MINORITY COMMENTS

The minority believes that the people should have the right to choose the type of utility, publicly or privately owned, from which they will obtain the necessary services commonly called utilities. As Senator Metcalf pointed out in his testimony before this committee, "Montana is the only mainland state without a single municipal electric system." This right is especially important in our state, where consumer protection against unreasonable and unjust exactions of privately-owned monopoly utility corporations is totally inadequate and where the legislature has historically displayed no disposition to improve it.

COMMENTS ON MINORITY PROPOSAL

DELEGATE PROPOSAL #121

Section ___. PUBLIC UTILITY CORPORATIONS. Any county or municipal subdivision of the state has the power and authority to establish public corporations for the maintenance and operation of utilities, subject to regulations prescribed by law.

MAJORITY COMMENTS

The majority wishes to justify its rejection of Delegate Proposal #121:

1. The proposal is primarily legislative.

2. The Legislative Assembly currently possesses, within its plenary powers, the right to create such corporations without Constitutional permission.

3. The proposal would create authority for public utility districts, in the opinion of the majority, a matter which has been repeatedly considered and rejected by the legislature on numerous occasions.

MINORITY PROPOSAL

BE IT PROPOSED BY THE PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY COMMITTEE:

That there be a new section in the Labor Article to read as follows:

ARTICLE ___

LABOR

Section ___. RIGHT OF ORGANIZATION AND COLLECTIVE BARGAINING. Employees in private or public employment shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection.

/s/ George B. Heliker

/s/ Joseph McCarvel

COMMENTS ON MINORITY PROPOSAL

COLLECTIVE BARGAINING

Section ___. RIGHT OF ORGANIZATION AND COLLECTIVE BARGAINING. Employees in private or public employment shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection.

MINORITY COMMENTS

This proposal is taken verbatim from section seven of the National Labor Relations Act except for the addition of "in private or public employment." Its intent is to give Constitutional recognition to the rights first accorded employees covered by the NLRA in 1935 and to extend them to all employees, including public employees. It does no more than confer the dignity of Constitutional recognition upon the long since well protected rights of most private employees. It does, however, extend to public employees a clarification of their right to organization and collective bargaining (cf. Benson v. School District #1 of Silver Bow Co. 136 Mont. 77; Zderick v. Silver Bow Co. 154 Mont. 118; 1969.) On the other hand, it does not establish a right to strike nor in any manner restrict the power of the legislature to regulate collective bargaining within the area not preempted by federal law, to regulate or prohibit the use of the strike or other aspects of the process of collective bargaining, or to regulate the internal affairs of unions.

The legislature is not mandated to implement the stated rights, although its power to do so is unrestricted. As respects public employees, particularly, the legislature is given no mandate, although it is intended that the rights established would of necessity be recognized in any legislation providing for a "merit" or "civil service" system for state employees.

The minority believes that it is time to give the right of organization and collective bargaining the Constitutional standing eventually accorded every basic right of free men. The history of Constitution-making is that rights are accorded Constitutional status after long decades or centuries of struggle, through which they have been largely won in law and in fact. The rights recognized by the Founding Fathers in our Federal Bill of Rights had already been won by countless brave and dedicated men, who for centuries freely gave their liberty, their lives, and their property to secure them. The Constitution merely reflected the success of that long struggle.

The same long struggle, extending in America over a century-and-a-half, was necessary to secure the right to form

unions free from the repression of government and the coercion of powerful and ruthless agglomerations of private capital. The same unselfish sacrifice of liberty, life, and property by brave and dedicated men occurred. As the never-ending battle to keep and strengthen the civil rights and liberties of a free people goes on unabated two centuries after our Bill of Rights was conceived, so will the striving to bring into employer-employee relations in all sectors of the economy the principles of fair play, countervailing power, and majority rule that have been recognized in law and fact for nearly two generations. But now is the time, though the contest to create and preserve those rights will be unending, to elevate them, in general principle, to the dignity of Constitutional law.

COMMENTS ON MINORITY PROPOSAL

COLLECTIVE BARGAINING

Section ___. RIGHT OF ORGANIZATION AND COLLECTIVE BARGAINING. Employees in private or public employment shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection.

MAJORITY COMMENTS

The majority wishes to express its justifications for rejecting the collective bargaining section:

1. The issue is legislative and not the concern of the Constitutional Convention.

2. The right to organize for bargaining purposes may in fact connotate the right to strike (especially within the public sector), and this may be undesirable in many circumstances.

3. The right of public employees to collectively bargain would be an aspect of any merit system established. We believe that both are legislative matters and should be considered only by the Legislature.

MINORITY PROPOSAL

BE IT PROPOSED BY THE PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY COMMITTEE:

That the following section be submitted by the Constitutional Convention for a separate vote of the people as a section to be added to the Labor Article if approved by the vote of the people:

ARTICLE ___

LABOR

Section ___. EMPLOYMENT RIGHTS. The right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.

/s/ R. J. Studer, Sr.

/s/ J. K. Ward

COMMENTS ON MINORITY PROPOSAL

EMPLOYMENT RIGHTS

BE IT PROPOSED BY THE PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY COMMITTEE:

That the following section be submitted by the Constitutional Convention for a separate vote of the people as a section to be added to the Labor Article if approved by the vote of the people:

> Section 1. EMPLOYMENT RIGHTS. The right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.

MINORITY COMMENTS

The thrust of the proposal is twofold: (a) it insures that the fundamental means by which a man supports himself and his family will not be subject to mandatory financial support of an association in which he may exhibit no interest, and, (b) it provides all employees the right to collectively bargain, subject to the denial of the right to strike for the public employee.

It is the intent that the proposal be submitted to the people for a separate vote, either to accept or reject. The proposal will provide the populace the right to vote on a most critical question, a question which the legislature has failed time and again to act upon and which has exhibited profound historical significance in Montana.

We currently experience compulsory unionism in Montana. The laborer seeks employment in a union shop where the union shop contract prevails. If he objects to financial support of the union, he is denied his right to work in that shop. Or, if the workers vote to adopt a union shop contract where one previously did not exist, the majority of these workers abrogate the basic right of the minority worker to provide for his family if he refuses to financially support the union. This right should not be subject to the whims of the majority, just as the right to vote is not subject to disenfranchisement, if the majority so votes. Justice Douglas states:

> "The right to work I had assumed was the most precious liberty that man possesses. Man has indeed as much a right to work as he has to live, to be free, to own property. It does men little good to stay alive and free and propertied if they cannot work. To work means to eat. It also means to live. (347 U.S. 442.)"

If we grant the right to men to voluntarily associate with those they independently enjoy, without financial sanctions, we are approaching our responsibilities as men. To insure that right of association, to insure an individual's freedom of contract, and to insure the continuance of competitive forces within the bargaining process, we ought to outlaw compulsory unionism. The passage of the right to work provision insures a viable union that is responsive to its members. Justice Brandeis remarked:

> "It is not true that the success of a labor union means a perfect monopoly. The union, in order to attain or preserve for its members individual liberty, must be strong and stable. It need not include every member of the trade. Indeed it is desirable for both the union and the employee that it should not. Absolute power leads to excesses and weakness. . . a nucleus of unorganized labor will check the oppression by the union as unions check the oppression by the employer. (335 U.S. 551)"

Unions in the long-run that increased profits be equated to increased wages. But if the two are equated, the employers are forced to recoup their costs and raise prices. Inflation progresses and for it there is no governmental remedy save the devaluation of the dollar or credit constriction, which in itself produces unemployment. The union worker continues to draw his compensation, but the non-union worker has no monopolistic union to insure his right of continued employment, if he is allowed to work by the union in the first place.

There is no question that unions have and continue to serve valuable functions; but, if there is one lesson to learn from history, it is that no civilization can long endure that doesn't insure the dignity and rights of the individual. Do the unions in fact render such valuable social functions that the "majority will" of the union is allowed to abrogate, under financial penalty, a man's need for self esteem and self realization? No private association has the right to force financial support of itself upon an individual. If it is done, it is nothing but a form of taxation without representation. Such taxation has often been the cause for new constitutions, and surely the time is upon us.

The proposal provides the right to bargain collectively and the limitation upon that right is the denial of public employees right to strike; it must be such to insure that the law, civil order, and the welfare of society are to be preserved. Likewise, the right to bargain collectively is not the right to bargain away the rights of the minority subject to the clout of the majority. Yet, Montana Labor Law allows the union shop to do just that.

This convention is a means for grass root expression by the people. It is the most responsive political instrument of the

populace for years past and to come. If we miss the opportunity to pass this vital question to the voters, we have passed the opportunity of a life time. We have surpassed the opportunity to restore man's right of self-determination through employment.

It is our duty to give the voters of Montana their right to vote upon this very vital question when we can so easily and economically do so at this time.

COMMENTS ON MINORITY PROPOSAL

EMPLOYMENT RIGHTS

BE IT PROPOSED BY THE PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY COMMITTEE:

That the following section be submitted by the Constitutional Convention for a separate vote of the people as a section to be added to the Labor Article if approved by the vote of the people:

Section 1. EMPLOYMENT RIGHTS. The right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.

MAJORITY COMMENTS

We observe the outset that the proposition popularly labelled "right to work" establishes no such right. Its sole practical effect is to prevent unions and managements from agreeing to make financial support of a union a condition of continuing employment. We note also that federal law (the Labor-Management Relations Act of 1947) prohibits arrangements which require union membership prior to employment (closed shop) and the interpretations of that act by the courts limit the obligation that can be imposed on any employee to the requirement that he tender to the union, by whose bargained contract with his employer his working conditions are governed, financial support on an equal basis with all other employees so affected (NLRB v. General Motors Corp., 373 U.S. 734; 1963). No employee can now legally be required to actually join a union in the sense of participating in its organizational life. He does not have to accept a union membership card; he cannot be required to submit to an initiation ritual; he cannot be compelled to attend meetings, or perform any other acts normally thought of as the accompaniments of organizational membership. He is simply required, a certain time after he becomes an employee, to contribute to the financial support of the organization which bargains for him.

While it is undeniable that the union security agreement which the minority proposal seeks to outlaw, imposes some restraint on the absolute freedom of the individual, it is our view that the restriction is in no essential respect different from the restrictions frequently imposed by majority rule in a democratic system, particularly, and of necessity, by collective labor agreements. Such agreements, ratified by majority vote, determine an employee's wage rate; his hours of work; the conditions under which he is subject to disciplinary actions, includ-

ing discharge, by the employer; his rights to a grievance procedure and his access to arbitration; his rights, usually related to his seniority date, with respect to layoffs, recall, promotion, transfer, vacation, holidays, pensions and a lengthy list of other conditions of employment. He may be required to contribute from his earnings to various "fringe benefit" plans, just as he is required by law to contribute to social security. That he may also be required to contribute financially to the support of the union that negotiated all of these other conditions on his behalf does not strike us as a significant and exceptional restriction on his freedom.

Union leaders and most members resist prohibitions of union security agreements not only because they believe all those who benefit from the union's bargaining efforts should help pay for them, but also because they believe the real motive of the advocates of such prohibitions has more to do with weakening unions than protecting workers. Unionists are not alone in this suspicion. As one academic student of collective bargaining has put it:

> "The National Right to Work Committee and those who support such legislation insist that theirs is a fight for principle, that no man should have to pay to work. The fact that so many are unable to see the same principle when the applicant is black rather than nonunion, as well as other evidence, suggests that their position may well be less one of principle and more one of anti-unionism. This is not to deny anti-unionism as a legitimate position, but only to argue that it should not be hidden."
>
> (Robert Evans, Jr., Dept. of Economics,
>
> Massachusetts Institute of Technology,
>
> Public Policy Toward Labor, Harper &
>
> Row, 1965. p. 168).

Much repetitious testimony was presented to the committee on behalf of the Minority Proposal, but we find it remarkable that not a single individual, from among the thousands supposedly disadvantaged by union security agreements, came forward to support it.

For the above reasons, the majority concludes that the Minority Proposal is without merit and does not belong in Montana's Constitution.

APPENDIX A

CROSS REFERENCES

Present Constitution	Committee Proposal
Article XV. Corporations other than Municipal	Non-Municipal Corporations
Sec. 1.	Deleted
Sec. 2.	Sec. 1, Grant of Power
Sec. 3.	Sec. 1, Grant of Power
Sec. 4.	Sec. 3, Cumulative Voting
Sec. 5.	Deleted
Sec. 6.	Deleted
Sec. 7.	Partially deleted and partially replaced by Sec. 7, long-short haul clause and Sec. 2, Protection for Citizenry.
Sec. 8.	Deleted
Sec. 9.	Partially deleted and partially replaced by Sec. 2, Protection for Citizenry
Sec. 10.	Sec. 5, Watered Stock Provision
Sec. 11.	Deleted
Sec. 12.	Deleted
Sec. 13.	Sec. 6, Retrospective Law Prohibition
Sec. 14.	Deleted
Sec. 15.	Deleted
Sec. 16.	Deleted
Sec. 17.	Deleted
Sec. 18.	Deleted

Sec. 19.	Deleted
Sec. 20.	Deleted and partially replaced by Sec. 2, Protection for Citizenry
None	Consumer Protection and Education. section 2.
Article XVIII	
Labor	Labor
Sec. 1.	Sec. 1.
Sec. 2.	Deleted
Sec. 3.	Deleted
Sec. 4.	Deleted
Sec. 5.	Deleted
None	Merit System
Article X.	
Institutions	Institutions and Assistance
Sec. 1.	Sec. 1.
Sec. 5.	Sec. 5.

APPENDIX E

PROPOSALS CONSIDERED BY COMMITTEE

The following delegate proposals were examined and considered by the Health, Welfare, Labor, Industry Committee during its deliberations:

	Number of Proposal	Chief Sponsor	Subject Matter	Disposition
1.	45	Lyle Monroe	Right to basic necessities of life	Rejected
2.	70	Lucile Speer	Consumer protection	Rejected
3.	71	Lucile Speer	Merit System	Rejected
4.	73	George Heliker	Collective bargaining	Rejected
5.	76	George Heliker	Public utility regulation	Rejected
6.	78	R.J. Studer, Sr.	Right to work	Rejected
7.	105	Robert Kelleher	Equal pay	Rejected
8.	121	Paul Harlow	Municipal utility districts	Rejected
9.	138	Mike McKeon	Minimum wage	Rejected
10.	144	Jerome Leondorf	Merit system	Accepted
11.	148	Joseph McCarvel	State as employer of last resort	Rejected
12.	177	Joseph McCarvel	Arbitration	Rejected

APPENDIX C

WITNESSES HEARD BY COMMITTEE

Name - Affiliation - Residence - Subject

1. Frank Murray - Office, Secretary of State - Helena - Corporations other than Municipal.

2. Leonard C. Larson - Office, Secretary of State - Helena - Corporations other than Municipal.

3. John Delano - Montana Railroad Association - Missoula - Corporations other than Municipal.

4. J. W. McDonald - Mountain Bell - Helena - Corporations other than Municipal.

5. Lloyd Crippen - The Anaconda Co. - Butte - Corporations other than Municipal.

6. P. L. MacDonald - The Anaconda Co. - Butte - Corporations other than Municipal.

7. Douglas M. Greenwood - Noble, Picotte & Noble - Helena - Corporations other than Municipal.

8. Roderick R. Gudgel - Montana State Pharmaceutical Association - Helena - Corporations other than Municipal.

9. Kenneth W. Brown - Dept. Secretary of State - Helena - Corporation other than Municipal.

10. Ross Gudgel - self - Helena - Constitutional Article XVIII - Labor.

11. Elton Hartze - American Federation of County, State and Municipal Employees - Missoula - Constitutional Article XVIII, Labor.

12. Harry Billings - AFL-CIO - Helena - Article XVIII, Labor.

13. Ernie Post - Montana State AFL-CIO - Helena - Article XVIII, Labor.

14. James W. Murry - Montana State AFL-CIO - Helena - Constitutional Article XVIII, Labor.

15. Mr. Sidney Smith - Commissioner, Department of Labor and Industry - Helena - Article XVIII, Labor.

16. Mr. Larry Hunt - Highway Dept., Local 1199 of the American Federation of State, County, and Municipal Employees - Missoula - Article XVIII, Labor.

17. Fred Parrett - Director, Employment Security Commission - Helena - Article XVIII, Labor.

18. Ed Shobat - County Commissioner, Cascade County - Great Falls - Welfare.

19. Ted Carkulis - Montana Department of Social and Rehabilitation Services - Helena - Welfare.

20. William McCarvel - self - Helena - welfare.

21. Ross Gudgel - self - Helena - Welfare.

22. Kandy Hauf - Constitutional Convention Intern - self - Bozeman - Welfare.

23. Steve Goldiron - Montana State Low-Income Organization - Helena - Welfare.

24. Ernest Steel - Public Service Commission - Helena - Article XV.

25. Bill Johnson - Director, Public Utilities Dept., Public Service Commissior - Helena - Article XV.

26. George Lackman - Commissioner, Department of Agriculture - Helena - Real Estate Commission.

27. Keith Colbo - Department of Revenue - Helena - Foreign Corporations.

28. Lucile Speer - Delegate - Missoula - Proposal #71, Merit System.

29. Jean M. Bowman - Delegate - Billings - Proposal #71, Merit System.

30. Mel Martenson - Director, Merit System Council - Helena - Proposal #71, Merit System.

31. Mr. Elton Hartze - American Federation of State, County & Municipal Employees - Missoula - Proposal #71, Merit System.

32. Henry Siderius - Delegate - Kalispell - Proposal #93, bargaining rights for farmers.

33. Ernest Post - AFL-CIO Director of COPE - Helena - Proposal #71, Merit System.

34. Steven E. Goldiron - Montana State Low-Income Organization - Helena - Proposal #45.

35. Sister Providencia - College of Great Falls - Great Falls -

Delegate Proposal #45.

36. Jim Raniere - Welfare Rights Organization - Great Falls - Delegate Proposal #45.

37. Malyn Aleson - Welfare Right Organization - Great Falls - Delegate Proposal #45.

38. Doris Flesch - Welfare Rights Organization - Great Falls - Delegate Proposal #45.

39. Minnie McReynolds - Welfare Rights Organization - Great Falls - Delegate Proposal #45.

40. Shirley Malkuck - Welfare Rights Organizatior - Great Falls - Delegate Proposal #45.

41. Irene Houle - Welfare Rights Organization - Great Falls - Delegate Proposal #45.

42. Larry Juelfs - Delegate Invitation - Helena - Delegate Proposal #45.

43. Jack R. Carlson - Montana Chapter National Association of Social Works - Helena - Delegate Proposal #45.

44. Carol Mitchell - Montana Common Cause- self - Helena - Delegate Proposal #45.

45. Frank R. Sennette - Dept. of Social Rehabilitation Services - Helena - Delegate Proposal #45.

46. Duane W. Welker - self - Hamilton - Delegate Proposal #45.

47. Don Scanlin - Delegate - Billings - Delegate Proposal #45.

48. Thomas E. Schneider - Executive Director for Montana Public Employees Association - Helena - Merit System.

49. Jack Marlow - Secretary-Manager of Montana Contractor's Association - Helena - Delegate Proposal #78, right-to-work.

50. James Stack - subpoena witness, Personnel Director, Montana State University - Bozeman - Merit System.

51. Wm. Bertsche - State Senator - self - Great Falls - State Merit System.

52. Robert James - Administration officer of State Department of Health - Helena - Merit System.

53. Larry Fastender, Sr. - self - Fort Shaw - Merit System.

54. Mr. D. H. Siewert - Montana Chamber of Commerce - Helena -

Delegate Proposal #76, right-to-work.

55. Jim Murry - Montana State AFL-CIO - Helena - Delegate Proposal #76, right-to-work.

56. George B. Heliker - Delegate - Missoula - Delegate Proposal #76, Public Utility Regulation.

57. Steve Goldiron - Montana State Low-Income Organization - Helena - Delegate Proposal #76, Public Utility Regulation.

58. Paul Harlow - Delegate - Thompson Falls - Delegate Proposal #121, Public Utility Districts.

59. Arlyne Reichert - Delegate - Great Falls - Delegate Proposal #70, Consumer Protectionism.

60. Lucile Speer - Delegate - Delegate Proposal #70, Consumer Protectionism.

61. C. W. Leaphart, Jr. - Committee subpoena - Helena - Delegate Proposal #76, Public Utility Regulation.

62. Gordon Bollinger - State Senator - Glasgow - Delegate Proposal #76, Public Utility Regulation.

63. Bill Koerner - self - Hamilton - Delegate Proposal #70 - Consumer Protectionism.

64. C. S. Robinson - Pacific Power & Light Co. - Kalispell - Delegate Proposals #76 and #121.

65. James F. Maher - Montana Vice President-General Manager - Mountain Bell Telephone Company - Helena - Utility Regulation.

66. W. F. Barnes - President, Project Telephone Co. - Worden - Delegate Proposal #76, Public Utility Regulation.

67. Charles C. Lovell - Great Falls Gas Company - Great Falls - Delegate Proposals #76 and #121, Public Utilities.

68. Henry Loble - Montana, Dakota Utilities & General Telephone Company of the Northwest Division - Helena - Delegate Proposal #76 and #121, Public Utilities.

69. Robert Corette - Montana Power Company - Butte - Delegate Proposals #76 and #121, Public Utilities.

70. George O'Connor - Montana Power Company - Butte - Delegate Proposals #76 and #121, Public Utilities.

71. Jay. W. Preston - Ronan Telephone Company - Ronan - Delegate Proposal #76, Public Utility Regulations.

72. Edwin S. Booth - Montana Railroad Association - Helena - Delegate Proposal #76, Public Utility Regulations.

73. Senator Lee Metcalf - United States Senator, by invitation - Helena and Washington D.C., - Delegate Proposal #76, Public Utility Regulations.

74. Seldon S. Frisbee - Cut Bank Gas Company - Cut Bank - Delegate Proposal #76, Public Utility Regulations.

75. Joe Curtis - Ryegate Telephone Company - Ryegate - Delegate Proposal #76, Public Utility Regulations.

76. Ian B. Davidson - D. A. Davidson Company - Great Falls - Delegate Proposal #76, Public Utility Regulations.

77. Paul J. Briesh - Treasure State Telephone Company - Big Timber - #76, Public Utility Regulations.

78. Ward F. Jurkenier - C.E.A., Director, Cut Bank Gas Company - Great Falls - Delegate Proposal #76, Public Utility Regulations.

79. C. M. Wall - Montana Citizens Freight Rate Association - Helena - Delegate Proposal #76, Public Utility Regulations.

80. James Lechner - Executive Secretary of the Billings Contractor's Council - Billings - Delegate Proposal #78.

81. Tom Dolan - Independent Businessman - Billings - Delegate Proposal #78, Right-to-work.

82. Joe Chovanak - Farmers Union Local #160 - East Helena - Delegate Proposal #78, right-to-work.

83. Paul Bessler - self - Helena - Delegate Proposal #78, right-to-work.

84. Cornie Thiesser - Senator - Lambert - Delegate Proposal #76, Public Utility Regulation.

85. Elton Bartze - American Federation of State, County, and Municipal Employees - Missoula - Delegate Proposal #73, The right for public and private employees to engage in collective bargaining.

86. Francis Mitchell - Montana Common Cause - Helena - Delegate Proposal #76 - Public Utility Regulation.

87. Clyde Jarvis - Montana Farmers Union - Great Falls - Delegate Proposal #76 - Public Utility.

88. John L. McKeon - State Senator, self - Anaconda - Delegate

Proposal #76, Public Utility Regulation.

MAJORITY PROPOSALS

ROLL CALL VOTE---PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY - - - - 1972

	Date No: DO ADOPT	Date No: DO ADOPT	Date No: DO ADOPT	Date No: DO ADOPT	Date No: DO DELETE	Date No: 144 DO ADOPT	Date No:
	New Corporation Article	Welfare--New Article on Institutions and Assistance, Sec. 1	New Article on Institutions & Assistance, Section 2	New Labor Article Section 1	Labor, Delete Sections 2, 3, 4 and 5 of present Constitution.	Merit System	
Charles H. Mahoney	Y	N	Y	N	N	N	
Joseph H. McCarvel	Y	Y	Y	Y	N	Y	
Don Scanlin	N	Y	Y	Y	Y	Y	
R. J. Studer, Sr.	Y	Y	Y	Y	Y	Y	
William H. Swanberg	Y	Y	Y	Y	Y	N	
Edith Van Buskirk	Y	N	Y	Y	Y	Y	
Jack K. Ward	Y	Y	Y	Y	Y	N	
George B. Heliker	Y	Y	Y	Y	Y	Y	

ROLL CALL VOTE---PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY - - - - 1972

	Date No: 73 DO NOT ADOPT	Date No: 76 DO ADOPT	Date No: 78 DO ADOPT	Date No: 121 DO ADOPT	Date No:	Date No:	Date No:
Charles H. Mahoney	Y	N	N	N			
Joseph H. McCarvel	N	Y	N	N			
Don Scanlin	Y	N	N	Y			
R. J. Studer, Sr.	Y	N	Y	N			
William H. Swanberg	Y	N	N	N			
Edith Van Buskirk	Y	N	N	Y			
Jack K. Ward	Y	N	Y	N			
George B. Heliker	N	Y	N	Y			
	Revised Proposal #73 Collective Bargaining	Revised Proposal #76 Public Utility Reg.	Right-to-work	Public Utility Corporations			

ROLL CALL VOTE---PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY - - - - 1972

	Date No:138 DO NOT ADOPT	Date No:148 DO NOT ADOPT	Date No:177 DO NOT ADOPT	Date No.45 DO ADOPT	Date No:105 DO NOT ADOPT	Date No:71 DO NOT ADOPT	
Charles H. Mahoney	Y	Y	Y	N	Y	Y	
Joseph H. McCarvel	Y	Y	Y	N	Y	N	
Don Scanlin	Y	Y	Y	N	Y	Y	
R. J. Studer, Sr.	Y	Y	Y	N	Y	Y	
William H. Swanberg	Y	Y	Y	N	Y	Y	
Edith Van Buskirk	Y	Y	Y	Y	Y	Y	
Jack K. Ward	Y	Y	Y	N	Y	Y	
George B. Heliker	Y	Y	Y	Y	Y	Y	
	Mandatory Minimum Wage	Full employment, State as Employer of Last Resort	Labor Management Conciliation Court	Right of Basic Necessities	Equal Pay with Federal for Equal Work	Merit System	

APPENDIX F

Since the committee members found cause to delete the greater portion of Article XV on non-municipal corporations, they wish to convey briefly the justifications for these deletions to the committee of the whole.

Section 1. The original intent of this section was to abolish all those corporate bodies which existed only on paper prior to 1889. The only possible danger (if it can be so termed) in deletion would be if some pre-1889 corporation would once again commence business. This possibility was mitigated by statute 15-808 (R.C.M. 1947) which stipulated that a corporation had to organize and commence business within one year or lose its charter. Although repealed in 1969, this statute quite possibly annulled any pre-1889 corporations, that is if section 1 of the 1889 Constitution did not already do this for all time.

Section 2. Proposed language of the new section 1 stipulates that "Corporate charters shall be granted. . . .only pursuant to general law." In addition to this committee's proposed section, which precludes special grants of charters by the legislature, the Legislative Committee has expressed its intention to retain the sense of Article V, section 26, which also prohibits special chartering.

Section 3. The committee believes that the power of the state to dissolve corporate charter, as provided in proposed section 1, in conjunction with proposed section 2's protection provision, adequately expresses the intent of this section.

Section 4. This is retained as section 3 of the proposed article.

Section 5. The committee finds this section to be either obsolete, superseded by ICC action, or covered by existing statutes. The committee believes that all intrastate matters relating to this section are legislative.

Section 6. The committee deleted this section for the same reasons cited under consideration of section 5.

Section 7. This section is considered to be primarily legislative. The exception is the long-short haul clause relating to intrastate matters, which is neither covered by statute nor by ICC regulation. The committee retained this clause as section 4 of the proposed revision in the belief that intrastate railroad transportation may one day increase in response to the demands of increased urbanization and development of Montana coal fields.

Section 8. All 1889 transportation companies have filed the necessary acceptances with the Secretary of State. Therefore,

this section is superfluous.

Section 9. The committee members understand that the Bill of Rights Committee will present a section on eminent domain and that they will then have an opportunity to consider at greater length the ramifications of these proposed revisions in regard to corporations.

It is intended that section 2 of the proposed article will prevent infringement upon the general welfare by corporations. This was provided for in section 9 of the 1889 Constitution.

Section 10. This section is retained as section 5 of the revised article.

Section 11. The committee feels that this is a legislative matter. It further believes that equal treatment under the law is provided by proposed section 2 as well as by the 14th Amendment to the United States Constitution.

Section 12. A street is the property of a municipality or town and the use of such property is subject to the eminent domain doctrine. The committee believes the courts will protect the essential value of such a street or highway from capricious condemnation. This is also viewed as a matter under legislative justification.

Section 13. This section has been expanded and included in the revised article as section 6. It is the intent that no retrospective law be passed by the legislative assembly which would impose a liability on any citizen in respect to transactions or considerations already completed.

Section 14. This is considered to be statutory in nature.

Section 15. This is deleted from the proposed article. Reasoning behind this deletion is that the state inherently possesses this plenary power and the only restriction upon its jurisdiction is the Commerce Clause of the United States Constitution which, in any event, already supersedes section 15.

sections 16 and 17. These are considered statutory in nature.

Section 18. This definition of a corporation is tautological and unnecessary. Any decision to classify a joint stock company as a corporation ought to be made by the legislative Assembly. Powers of the corporate body are considered statutory material.

Section 19. The committee feels that this section is unnecessary in light of existing statutory means by which a corporation may be sued and levied upon.

Section 20. Section 2 of the revised Article XV adequately

covers this matter. The present wording of section 20 is unduly restrictive, nebulous and statutory.

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

EDUCATION AND PUBLIC LANDS COMMITTEE PROPOSAL

NO. X

Date Reported: February 22, 1972

/s/ Richard J. Champoux, Chairman

/s/ Robert L. Noble, Vice Chairman

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Date: February 22, 1972

To: MONTANA CONSTITUTIONAL CONVENTION

From: Education and Public Lands Committee

Ladies and Gentlemen:

The Education and Public Lands Committee submits herewith proposed new Articles on Education, Public Lands, and Investments. The proposed Articles are intended to replace the Education, Public Lands, and Trust and Legacy Fund Articles in the present Constitution.

Throughout its hearings the committee heard a great deal of thoughtful, well-researched testimony and benefited fully from the many sources of information provided by interested persons and groups. Realizing the crucial importance of education in the state, the committee was guided by the desire to insure a solid foundation for public education in Montana and to allow for the flexibility essential to the educational process. The committee resolved almost all questions with few dissents. On two issues, however, the questions of public aid to sectarian schools and investments, the committee failed to reach agreement. The dissenting members are presenting minority reports included herein.

In signing this majority report a committee member does not necessarily endorse each and every statement in it.

The committee utilized the services of the following people in addition to its members: Sally Watson, secretary, Bruce Sievers, research analyst, and Jeffrey Rupp, Maureen Callahan, Nancy Lien and John Murphy, interns.

Respectfully submitted,

/s/ Richard J. Champoux, Chairman

/s/ Robert L. Noble, Vice Chairman

MAJORITY PROPOSAL

BE IT PROPOSED BY THE EDUCATION AND PUBLIC LANDS COMMITTEE:

That there be a new Article on Education to read as follows:

ARTICLE ___

EDUCATION

Section 1. EDUCATIONAL GOALS AND DUTIES OF THE STATE. It shall be the goal of the people of Montana to provide for the establishment of a system of education which will develop the full educational potential of each person. Equality of educational opportunity shall be guaranteed to each person of the state.

The legislature shall provide for a system of high quality free public elementary and secondary schools. The legislature may also provide for other educational institutions, public libraries and educational programs as are deemed desirable. It shall be the duty of the legislature to provide by taxation or other means and to distribute in an equitable manner funds sufficient to insure full funding of the public elementary and secondary school system.

Section 2. PUBLIC SCHOOL FUND. The public school fund of the state shall consist of the proceeds of such lands as have heretofore been granted, or may hereafter be granted, to the state by the general government known as school lands; and those granted in lieu of such; lands acquired by gift or grant from any person or corporation under any law or grant of the general government; and of all other grants of land or money made to the state from the general government for general educational purposes, or where no other special purpose is indicated in such grant; all estates, or distributive shares of estates that may escheat to the state; all unclaimed shares and dividends of any corporation incorporated under the laws of the state, and all other grants, gifts, devises or bequests made to the state for general educational purposes.

Section 3. PUBLIC SCHOOL FUND INVIOLATE. The public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion, to be invested under the restrictions to be provided by law.

Section 4. BOARD OF LAND COMMISSIONERS. The governor, superintendent of public instruction, secretary of state and attorney general shall constitute the state board of land commis-

sioners, which shall have the direction, control, leasing, exchange and sale of the school lands of the state, and the lands granted or which may hereafter be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be prescribed by law.

Section 5. PUBLIC SCHOOL FUND REVENUE. Ninety-five per centum (95%) of all the interest received on the school funds of the state, and ninety-five per centum (95%) of all rents received from the leasing of school lands and of all other income from the public school funds shall be equitably apportioned annually to public elementary and secondary schools as provided by law.

The remaining five per centum (5%) of all the interest received on the school funds of the state, and the remaining five per centum (5%) of all the rents received from the leasing of school lands and of all other income from the public school funds, shall annually be added to the public school funds of the state and become and forever remain an inseparable and inviolable part thereof.

Section 6. AID PROHIBITED TO SECTARIAN SCHOOLS. Neither the legislative assembly, nor any county, city, town, or school district, or other public corporations, shall ever make directly or indirectly, any appropriation, or pay from any public fund or monies whatever, or make any grant of lands or other property in aid of any church, or for any sectarian purpose, or to aid in the support of any school, academy, seminary, college, university, or other literary, scientific institution, controlled in whole or in part by any church, sect or denomination whatever.

Section 7. NON-DISCRIMINATION IN EDUCATION. No religious or partisan test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the state, either as teacher or student; nor shall attendance be required at any religious service whatever, nor shall any sectarian tenets be taught in any public educational institution of the state; nor shall any person be debarred admission to any public institution of learning on account of sex, race, creed, religion or national origin.

Section 8. SCHOOL ELECTIONS. The legislative assembly shall provide for elections of school district trustees.

Section 9. STATE BOARD OF EDUCATION. The board of public education and the board of regents of higher education, as hereafter designated shall together constitute the state board of education which shall meet periodically on matters of mutual concern. In case of a tie vote at such meeting the superintendent of public instruction may cast a vote.

Section 10. BOARD OF PUBLIC EDUCATION. There shall be a board of public education which shall exercise general supervision over the public school system and such other public educa-

tional institutions as assigned by law. Said board shall consist of seven members appointed by the governor with confirmation of the senate to six year overlapping terms. The governor and state superintendent of public instruction shall be ex officio non-voting members of the board. The duties of the superintendent of public instruction shall be prescribed by law.

Section 11. BOARD OF REGENTS OF HIGHER EDUCATION. There shall be a board of regents of higher education, a body corporate, which shall govern and control the academic, financial, and administrative affairs of the Montana university system, and shall supervise and coordinate other public educational institutions which may be assigned by law. Said board shall consist of seven members appointed by the governor to six year overlapping terms, subject to confirmation by the senate, under regulations provided by law. The board shall appoint its executive officer and prescribe his term and duties. The governor and superintendent of public instruction shall be ex officio non-voting members of this board.

Section 12. STATE UNIVERSITY FUNDS. The funds of the state university and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be prescribed by law, and shall be guaranteed by the state against loss or diversion. The interest of said invested funds, together with the rents from leased lands or properties shall be devoted to the maintenance and perpetuation of these respective institutions.

/s/ Richard Champoux, Chairman

/s/ Robert Nobles, Vice Chairman

/s/ Lloyd Barnard

/s/ William Burkhardt

/s/ Marjorie Cain

/s/ Max Conover

/s/ Carl Davis

/s/ Gene Harbaugh

/s/ Dan Harrington

/s/ Robert Woodmansey

/s/ John Toole

COMMENTS ON MAJORITY PROPOSAL

Education occupies a place of cardinal importance in the public realm. The educational system is charged with the task of shaping and cultivating the mind of each succeeding generation and with developing the capacities for cultural and technical advancement of society. State and local governments devote a far larger share of their financial resources to the support of education than to any other single public activity.

Because of this overriding importance of education, the committee recognizes the awesome task of providing the appropriate Constitutional provisions necessary to protect and nurture the public educational system. Each aspect of existing and proposed Constitutional language was thoroughly and deeply reflected upon by the committee in light of present and future needs. Fundamental to the committee's considerations were the twin goals of protecting the integrity of a quality educational system and allowing for flexibility to meet changes as yet unknown but which will certainly occur in future developments in the field of learning.

In light of these aims, the committee has preserved those provisions in the existing Constitution which have proven worth and which pose no hinderance to potential developments. On the other hand, the committee has made revisions in those places where it saw a definite need for constitutional improvement. Some of these changes have to do with basic aims of the educational system; others are concerned with structural or administrative adaptations to changing conditions in education. The most significant revisions are a clear statement of educational goals of the state, a mandate for the support of education allowing increased financial flexibility, deletion of antiquated age and school term restrictions, and a revised administrative structure for both the public school system and for higher education.

The committee views these proposed changes as vital to the quality and efficiency of education in Montana. The proposed article provides appropriate guarantees to the viability of the public school system, while leaving the way open to future transformations in the educational process.

> Section 1. EDUCATIONAL GOALS AND DUTIES OF THE STATE. It shall be the goal of the people of Montana to provide for the establishment of a system of education which will develop the full educational potential of each person. Equality of educational opportunity shall be guaranteed to each person of the state.
>
> The legislature shall provide for a system of high quality free public elementary and secondary schools. The legislature may also provide for other educational institutions, public libraries and educational programs

as are deemed desirable. It shall be the duty of the legislature to provide by taxation or other means and to distribute in an equitable manner funds sufficient to insure full funding of the public elementary and secondary school system.

COMMENTS

The proposed section by the committee would replace sections 1, 6 and 7 of the existing Constitution. The committee desires to broaden the goals set forth for an educational system beyond those which might have been appropriate for public schools at the time of writing the existing Constitution. The horizons of education are constantly expanding. There has been a growing recognition of educational rights which extend beyond arbitrary age and school term limitations. Society has accepted the duty to support a quality educational system, and courts have stressed that it must be made available on approximately equal terms. Thus, the committee proposes a new section which takes into account the widened perspectives embodied in these developments.

The first sentence, "It shall be the goal of the people of Montana to provide for the establishment of a system of education which will develop the full educational potential of each person," is appropriate as a statement of purpose for education in the state. Learning is gradually being recognized as a process which extends from the early months till the late years of life. A long range goal of the state should be to foster and support this learning process for all citizens to the maximum level possible in any given era. The committee realizes that economic and human resources may be insufficient at present to promote learning "to the full educational potential of each person," but it feels strongly that the goal should be set forth as an ideal to serve as a guide for educational development in the state. All members of society should be ultimately eligible for the benefits of enlightenment and skills acquired through the educational process.

The subject of "equal educational opportunity" has become a particularly important doctrine in modern education. Recent federal, district and state court decisions have interpreted the Fourteenth Amendment to the federal Constitution as applying to educational financing. Under this doctrine, the state must show a compelling interest to maintain a classification system by wealth which interferes with the individual's fundamental right to an education. By this standard the courts have ruled that the school district financing systems in four states violate equal protection.

Montana's school financing system is similar to those

declared unconstitutional in the states where challenges have been made. The same vast discrepancies in tax burdens and educational support exist in Montana as exist elsewhere. A recent study by the Office of the Superintendent of Public Instruction (A Study of Basic Educational Program Funding Methodology in Montana, January 1972) shows that Montana school district wealth per ANB varies by as much as a ratio of 10,000 to 1. The enormous differences in tax bases mean that many rich districts can provide much better education facilities with lower tax rates. Some poor districts must tax their residents three or four times as much as rich districts to provide less than half as much money per student. Clearly, the existing school foundation program in Montana does not attain its aim of equalizing educational burdens and benefits. Indeed, the study shows that in the state as a whole, foundation program expenditures actually subsidize wealthier districts more than poorer districts, aggravating factors which already tend to make education a function of wealth.

This conforms to a national pattern in which states spend on the average twice as much to educate the children of the rich as to educate the children of the poor. Other forms of barriers to equal educational opportunity, such as cultural or linguistic factors in minority groups, may also hinder the development of children on an equal basis. Clearly the educational system must be directed to the elimination of blatant injustices which may predetemine a lifelong disadvantage. The principle of equal educational opportunity, as a corollary to the right to equal protection of the laws, stands as a fundamental maxim for the public educational system.

It has been suggested that Constitutional statement of equal educational opportunity might be a mandate for the attainment of an impossible ideal, and that such a statement of principle could open the door to a welter of demands for making public education absolutely equal for every person in society on every level. This interpretation, however, would represent an extreme and absurd misconstruction of the meaning of the principle. The principle of "equal educational opportunity" is no more an abstract absolute than is the right to "equal protection of the laws" or any other Constitutionally guaranteed right or freedom. No right is absolute; each must be considered in connection with other rights and freedoms and in terms of the social context to which it is applied.

In keeping with the rational articulated in Serrano v. Priest and other court decisions in this area, the committee agrees with the exemplary words of a landmark U.S. Supreme Court decision:

In these days, it is doubtful that any child may

> reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms. [Brown v. Board of Education. 347 U.S. 493 (1954)]

Likewise, the California Supreme Court held:

> [I]ts uniqueness among public activities clearly demonstrates that education must respond to the command of the equal protection. [Serrano v. Priest, 96 Cal 601]

Both Brown and Serrano attacked the substantial disparities in the educational systems under review and concluded that neither race nor wealth could be used to impair the equal right of children to an education. Neither of these cases mandated some sort of precise equality of education for the entire lifespan of the human being. The fundamental principle established, however, is that every child should have approximately the same opportunity to receive an adequate basic education. What this means in practice will be legislatively defined in terms of prevailing social conditions.

The sentence, "the legislature shall provide for a system of high quality free public elementary and secondary schools," is a mandate to the legislature to insure the existence of a quality basic educational system. The word "quality" is an instruction to the legislature to provide not simply a minimum educational system, but one which meets contemporary needs and produced capable, well-informed citizens. The word "free" is understood by the committee to mean that those aspects of an elementary or secondary education shall be free from cost which are essential to those courses required by the school for graduation.

The committee also believes that other educational institutions and programs and libraries are important parts of educational activity in the state. The particular sorts of institutions and programs, however, must be left for the legislature to determine, since changing conditions may require a variety of endeavors.

The final sentence in section 1 provides a vital mandate to the legislature for the support of the public school system. The committee feels that a strong directive is necessary to insure the support of the public elementary and secondary school system. The particular type of financing system is a matter properly left to legislative determination, but the fundamental principles upon which such a system is based are matters of a Constitutional nature. The committee specifies three tenets of a school financing system: (1) that taxation for such a system be equitably apportioned; (2) that the school funds be distributed in an equal manner; and (3) that the funds supplied be sufficient to insure full funding of the system.

The first two of these principles follow from the meaning of "equal educational opportunity." Two aspects of equal opportunity have been emphasized in the judicial decisions: equality of tax burden for the support of education and equality of distribution of educational funds. A wide variety of particular school financing plans, from a wholly state-financed program to a plan for substantial redistricting, have been suggested to meet these criteria. The selection of which plan best suits the situation in Montana is a matter for the legislature to decide. The Constitutional language solely established norms for the evaluation of such plans.

The third principle set forth by the committee, that of full funding, is a mandate to insure that the public school system will exist on a plane of equal quality rather than of equal poverty. The maxim of "full funding" is intended by the committee to require the establishment of the school system on a realistic basis.

Once the needs for a basic quality system of elementary and secondary schools have been realistically assessed, the state has the obligation to guarantee that this minimum basic program be fully funded. This requirement would substitute rationality and equity for the confusion and injustice which have often plagued school finance systems in the past.

> Section 2. PUBLIC SCHOOL FUND. The public school fund of the state shall consist of the proceeds of such lands as have heretofore been granted, or may hereafter be granted, to the state by the general government known as school lands; and those granted in lieu of such; lands acquired by gift or grant from any person or corporation under any law or grant of the general government; and of all other grants of land or money made to the state from the general government for general educational purposes, or where no other special purpose is indicated in such grant; all estates, or distributive shares of estates that may escheat to the state; all unclaimed shares and dividends of any corporation incorporated under the laws of the state, and all other grants, gifts, devises or bequests made to the state for general educational purposes.

COMMENTS

In securing assured sources of support for the educational system, the committee agreed that Constitutional protection should be supplied to the public school fund. Section 2 in the existing Constitution has provided this protection by itemizing the components of the fund and unequivocally specifying that these contributing funds shall be used for education. The name

"public school fund" which appears in this section is adopted as the name to be used consistently hereafter in the Constitution.

Section 3. PUBLIC SCHOOL FUND INVIOLATE. The public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion, to be invested under the restrictions to be provided by law.

COMMENTS

This section is identical to section 3 of the existing Constitution, with the exception that the Constitutional investment restrictions are removed. The committee is of the opinion that the investment policy for the public fund is properly a legislative matter. Beyond guaranteeing the inviolate character of the fund, a Constitutional provision cannot anticipate investment policies appropriate to changing conditions. Moreover, the existing language, "to be invested, so far as possible, in public securities within the state, including school district bonds, issued for the erection of school buildings," is both ambiguous and overly restrictive. The benefit to the schools might be much greater if in any given period the public school fund were otherwise securely invested. Flexibility requires that such policy decisions be made by the legislature.

Section 4. BOARD OF LAND COMMISSIONERS. The governor, superintendent of public instruction, secretary of state and attorney general shall constitute the state board of land commissioners, which shall have the direction, control, leasing, exchange and sale of the school lands of the state, and the lands granted or which may hereafter be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be prescribed by law.

COMMENTS

This section remains almost unchanged from the original Constitution. A board composed of four elective officials, the governor, superintendent of public instruction, attorney general, and secretary of state, serves an important function in supervising the management of the state school lands and the income derived from these lands. The board while operating under this Constitutional provision, has worked well in the past and would appear to be able to do the same for the forseeable future. The only change deemed desirable at this time is the addition of the word "exchange" to the list of activities within the board's power. The need for this has become evident in cases where the state has been prevented from making advantageous exchanges of

land by the omission of this power from the present Constitutional provision.

The committee also considered revising the membership of the board, and particularly reducing the number of members to three by the omission of the Secretary of State, but decided that the four Constitutionally named elective officers were an important source of direct popular control and that an even-numbered board requiring a majority of three for a decision would emphasize the principle of caution over that of expediency.

Section 5. PUBLIC SCHOOL FUND REVENUE. Ninety-five per centum (95%) of all the interest received on the school funds of the state, and ninety-five per centum (95%) of all rents received from the leasing of school lands and of all other income from the public school funds shall be equitably apportioned annually to public elementary and secondary schools as provided by law.

The remaining five per centum (5%) of all the interest received on the school funds of the state, and the remaining five per centum (5%) of all the rents received from the leasing of school lands and of all other income from the public school funds, shall annually be added to the public school funds of the state and become and forever remain an inseparable and inviolable part thereof.

COMMENTS

The proposed section 5 is a shortened and revised version of section 5 in the present Constitution. The intent of the provision, to Constitutionally protect the interest and income from the public school fund, is important; however the particular restrictions as to its distribution to schools are considered obsolete in light of present conditions. The language concerning the portions to be distributed and that which is to be reinvested remains the same as in the present Constitution. The methods of distribution previously specified are replaced by a general phrase "shall be equitably apportioned annually to elementary and secondary schools as provided by law."

The replacement language provides the desired flexibility to the legislature to develop school financing programs in tune with current necessities. Particularly relevant to this change is the trend across the nation, in accordance with recent court decisions under the equal protection doctrine, to provide more equitable school financing systems. The "flat grant" type of aid provided under the old method of distributing income and interest to all school districts on a census basis is clearly anti-equalizing under the standards discussed in the commentary to section 1. By specifying only that the distribution must be

"equitable" the new language allows the legislature to determine the type of distribution which will attain this goal.

Restrictions in the form of specified districts, age, and school terms which may have been applicable at the time of writing of the 1889 Constitution, are no longer meaningful. Rather than attempt to apply new restrictions more in keeping with the contemporary school system, the committee determined that it was preferable to allow for changing needs as interpreted by the legislature by designating only a broad standard, namely "equitably apportioned as provided by law."

A further element in the distribution system authorized by the existing provision is the specification that the interest and income money be distributed to the "several school districts." This has been interpreted in the past to mean that funds deriving from this source be granted only to elementary schools, presumably because elementary schools were the only public schools in existence at the time when this provision was written. In keeping with its intention to expand legislative possibilities in educational finance, as discussed in the commentary on section 1, the committee has replaced the phrase "several school districts" with "public elementary and secondary schools." This would change the existing distribution system to include high schools as recipients of interest and income money. The immediate result is anticipated by the Office of the Superintendent of Public Instruction to result in a net saving of administrative costs to the state. (See appendix E.)

> Section 6. AID PROHIBITED TO SECTARIAN SCHOOLS. Neither the legislative assembly, nor any county, city, town, or school district, or other public corporations, shall ever make directly or indirectly, any appropriation, or pay from any public fund or monies whatever, or make any grant of lands or other property in aid of any church, or for any sectarian purpose, or to aid in the support of any school, academy, seminary, college, university, or other literary, scientific institution, controlled in whole or in part by any church, sect or denomination whatever.

COMMENTS

After long and serious consideration, a majority of the committee decided to retain the section in the existing Constitution (Article XI, section 8) which strongly prohibits direct or indirect aid from any public fund of the state to any sectarian educational institution or for any sectarian purpose. The committee recognizes the merit and thoughtfulness of arguments offered for and against any change in this section, but agrees fundamentally that any alteration in wording might jeopardize the precarious historical balance which has been struck between opposing doctrines and countervailing principles.

The following major points are the most important reasons for the committee's decision:

(1) The primary and significant advantage secured by the present provision is the unequivocal support it provides for a strong public school system. The traditional separation between church and state, an important part of the American social framework, has also become a fundamental principle of American education. The growth of a strong, universal, and free educational system in the United States has been due in part to its exclusively public character. Under federal and state mandates to concentrate public funds in public schools, the educational system has grown strong in an atmosphere free from devisiveness and fragmentation. Any diversion of funds or effort from the public school system would tend to weaken that system in favor of schools established for private or religious purposes.

(2) Education is primarily a function of the state and is properly regulated by the state. The state is therefore free to impose its own restrictions and rules upon the use of public funds for education. Although the Montana provision is more stringently prohibitive than is the federal First Amendment and provisions in some other states, this is within a state's prerogative. A state may prohibit forms of state aid which might be permissible under federal Supreme Court rulings.

(3) Any change in the present provision, whether substantial or merely formal, might endanger passage of the entire Constitution. The church-state issue, which is interwoven with the question of public aid to nonpublic schools, stirs deeply held emotional feelings in various sectors of the public. The emotionalism aroused over potential debates on this question might obscure other important issues in education and in the Constitution as a whole. The change in this area proposed in New York's 1967 Constitution is thought to have been a significant contributing factor to the Constitution's defeat at the polls. A large number of witnesses, representing various religious and nonreligious organizations, testified emphatically against any change in the present provision.

(4) Public aid to sectarian schools which might result from a relaxation of the prohibition also poses a potential threat to religion. The control which comes with aid could excessively involve the state in religious matters and could inadvertently favor one religious group over another. Several witnesses testified that they opposed aid not only from the standpoint of the protection of the state from religious influence but also from the standpoint of the protection of religion from political influence.

The above reasons apply to the decision by the majority of the committee to preserve the present provision, rather than to adopt the language of the federal First Amendment or make any

other change in the existing provision.

A second alternative considered by the committee was to exclude federal funds administered by the state from the applicability of the provision. A fundamental concern expressed by some witnesses before the committee was that some forms of federal aid to nonpublic schools, particularly of the type envisaged in "revenue sharing" programs, are or would be prohibited under the existing provision. The committee does not agree that this poses a realistic problem. As indicated in Appendix F, students in nonpublic educational institutions in the state are now receiving the benefit of a significant amount of federal aid, some of which is administered by the state. It is the majority of committee's opinion that presently operating federal aid programs in education are not being significantly affected by the Constitutional provision. As to future federal programs, the committee feels that precedent shows that potential problems can be resolved without a change in the Constitutional provision. No specific case was brought to the committee's attention in which federally granted funds have been denied in Montana to nonpublic schools because of the operation of the existing Constitutional provision.

> Section 7. NON-DISCRIMINATION IN EDUCATION. No religious or partisan test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the state, either as teacher or student; nor shall attendance be required at any religious service whatever, nor shall any sectarian tenets be taught in any public educational institution of the state; nor shall any person be debarred admission to any public institution of learning on account of sex, race, creed, religion or national origin.

COMMENTS

This section is a broadened version of the present section 9. A statement specifically barring discriminatory practices in education provides a necessary specification with respect to teachers and students of nondiscrimination principles broadly articulated in the Bill of Rights. The committee feels that the principle set forth in the last senterce of the present section i.e., "nor shall any person be debarred admission to any of the collegiate departments of the university on account of sex," represents an arbitrary limitation on the general principle of nondiscrimination in admission policies. The committee has therefore broadened the language to include all public educational institutions under the protection of the provision and to prohibit other kinds of possible discrimination.

The committee also considered carefully the language of the phrase, "nor shall any sectarian tenets be taught in any public

educational institution," and decided against any change in wording. There has been no record of difficulty in the interpretation of the meaning of this provision, which clearly is not intended to restrict objective learning about religious principles, but rather to prohibit the active promotion in a public school of religion or of any particular religious doctrine. The existing language adequately expresses this principle.

Section 8. SCHOOL ELECTIONS. The legislative assembly shall provide for elections of school district trustees.

COMMENTS

This section is similar to section 10 of the existing Constitution, but changes its effect. The original intent of the present section 10 was to segregate school elections from partisan elections. The committee feels that there are other reasons which negate this original intent and which dictate that decisions on this matter should be of a legislative rather than a Constitutional nature. First, it is questionable whether the holding of separate elections has the effect of insulating school issues from partisan ones. Other nonpartisan issues and candidates appear on the same ballot with partisan ones. Moreover, partisanship of various sorts may play a role in a school election whether held separately or not. At least one locality in Montana officially recognizes special parties just for the purposes of such school elections.

Secondly, the holding of separate school elections causes most localities a great deal of extra expense which could be better spent on education itself. One delegate informed the committee that her community spent $10,000 or more on every school election. The committee feels that such expenses are needless, particularly if the separate election does not accomplish its intended aims.

The proposed new section thus allows for flexibility by leaving the specification of election dates to the legislature, but it still reaffirms the importance of a Constitutional mandate that such elections shall continue to be held. The committee understands the vital importance of the principle of local control of schools and desires to insure the continuation of the system of local election of school trustees. These local school elections are an essential and irreplaceable part of the education system and their existence must be Constitutionally guaranteed.

Section 9. STATE BOARD OF EDUCATION. The board of public education and the board of regents of higher education, as hereafter designated shall together constitute the state board of education which shall meet

periodically on matters of mutual concern. In case of a tie vote at such meeting the superintendent of public instruction may cast a vote.

COMMENTS

Sections 9, 10, and 11 of the proposed new article deal with the state administrative structure for education. Together, these sections provide a substantially revised framework for the operation of the educational system. Under the authority of section 11 of the existing Constitution, a single state board of education presently exercises "supervision and control" over the entire state educational system, sitting as the state board of education on matters concerning the public school system and as ex officio board of regents on university matters. The proposed sections would replace this structure with two boards which would separately supervise higher education and the public school system, but would meet jointly as the state board of education on matters of mutual concern.

The proposed structure would provide a much needed reform in the administration of education in Montana. The state board of education, as it presently exists, operates under a provision written at a time (1889) when the educational system was fundamentally different from what it is today. The educational system of Montana in the nineteenth century consisted only of primary grammar schools and a newly founded state university. Today it consists of a universal system of elementary and secondary schools and a public higher educational system composed of two major universities, four colleges, and three community colleges. In 1889 there were less than 12,000 students in the public educational system; in 1970 there were more than 200,000 students enrolled. At the time statehood was granted Montana, the Office of the Superintendent of Public Instruction consisted of the superintendent and a clerk who performed mainly information-gathering functions in connection with local districts; at present the office has a staff of 162 and administers more than $52 million funds for a vast array of state educational programs.

The provision for a board which was appropriate to the 1889 situation is clearly not appropriate today. It is not even clear that the state board of education was ever intended to serve as the board for the entire educational system. The phrase, "and the various other state educational institutions" in the existing section 11, appears to refer only to what are commonly thought to be state-run institutions, i.e. state normal schools, school for the deaf and blind, and so forth. It was only by virtue of a Montana Supreme Court interpretation of this phrase in State v. Cooney (102 Mont. 521 [1936]) that this section was specifically ruled to apply to the elementary and secondary school system.

In practice, the state board of education has devoted the great majority of its time to matters of higher education. One important study of Montana education observes that there is a kind of informal division of labor between the board and the state superintendent, such that the lower schools are looked after by the superintendent and that the board sees its duties primarily in the field of higher education. The study concludes:

> The result is that the board's functions in public education become more of the nature of "trouble shooting" and too little of consistent long-range planning, policy formulation, appraisal, and the like. (Montana Taxation-Education Commission, Public Schools of Montana, 1958, p.2).

One major reason, therefore, for the creation of a two-board structure is the establishment of a board that will be specifically qualified for and concerned with the problems of elementary and secondary education and other institutions which may be assigned by law. The correlate of this structure is the establishment of a separate board for higher education which will be similarly qualified for and attuned to the particular problems of higher education.

The necessary coordination between these two separate boards would occur in the joint board provided for in the proposed section 9. This joint board, the state board of education, would meet periodically to act on matters of mutual concern to both sectors of education.

Further reasons for the reorganization of the boards of education are presented in the following sections.

> Section 10. BOARD OF PUBLIC EDUCATION. There shall be a board of public education which shall exercise general supervision over the public school system and such other public educational institutions as assigned by law. Said board shall consist of seven members appointed by the governor with confirmation of the senate to six year overlapping terms. The governor and the state superintendent of public instruction shall be ex officio non-voting members of the board. The duties of the superintendent of public instruction shall be prescribed by law.

This section creates the board of public education and prescribes its membership and responsibility. As described in the comments to the preceding section, the greatly expanded activities, personnel, and funding involved in elementary and secondary education require that this crucial sector of education have its own administrative board. The largest share of state funds for any one purpose go to elementary and secondary education. The state administers over 25 major federal programs in education. The kinds of education needed and offered are constantly changing

and expanding. A board which is to cope adequately with this vast area of responsibilities must consist of members who are qualified and who have sufficient time to become knowledgeable about the particular problems and issues of public education. A board is no more capable than is a superintendent of being competent to administer two fundamentally different areas of education.

The need for a separate board for public education promises to become even greater in the future. The present trends indicate the assumption of much greater role in educational financing by state and federal governments, possibly as much as 90 percent or more of total public school costs. Other trends also suggest an increasing centralization in education. This means an even greater degree of potential control of education at the state level. A well-informed and representative board would provide a much-needed balance to decisions on administrative policies.

A large majority of witnesses who testified on the subject, including key state officials and many educators, spoke in favor of the two-board concept. They agreed that both from the standpoint of public education and from that of higher education, the separation of functions is eminently sensible. A former chairman of the state board of education, a long-time distinguished member of the board, articulated the position of many:

> Please give every consideration to a two-board system. Frankly, even the most capable, dedicated board member finds it impossible to do justice to the total assignment. (Letter from Mr. M. F. Richard, February 15, 1972).

Numerous studies of the Montana educational system have recommended the creation of two boards. A legislative council report in 1960 resulted in the proposal for a Constitutional amendment to create two boards. The amendment was passed by the legislature but kept off the ballot for other reasons. The Legislative Council's recommendation, which was based on previous studies, offered the following major justification for a two-board system:

> Increased demands on our educational facilities due to a growing population and inflationary pressures require that the responsibility for the administration of our educational system be divided into two boards, a Board of Education whose responsibility would be primary and secondary education, and a Board of Regents whose responsibility would be higher education. There is a limit to the amount of time a lay board member can devote to these responsibilities. The overwhelming responsibility placed on board members has prevented them from devoting adequate time to the consideration of policy questions. (Montana Legislative Council, Higher Education, Report Number 5, Helena, 1960, p.1).

The fear has been expressed that a separate board for public education might usurp the powers of local boards. There is no reason to be concerned about such a possibility, however, since the powers granted the state board would be almost identical to those now granted. Indeed, the committee has actually deleted the word "control" from the powers now granted the board so that the new section reads, "exercise general supervision over the public school system." It would be difficult to argue that this grants any additional powers to the state board at the expense of local school boards.

Under existing law, vocational-technical centers will remain within the public school system and thus under the jurisdiction of the board of public education. Witnesses from the "vo-tech" field assured the committee that this was their preference at the present time. However, the language of this section and of the new section 11 allows sufficient flexibility so that, should conditions change, these institutions could be accommodated in the system of higher education.

The voting members of the board would consist of seven members selected by the governor for six-year overlapping terms. The governor and superintendent retain ex officio membership on the board but in a nonvoting capacity. The committee feels that the elective officials should be separate from board decision-making, but should retain membership on the board for informational and coordinating purposes.

The committee feels that the duties of the superintendent should be legislatively prescribed, to allow for changing conditions and possible alterations of the relationship between the board and the superintendent. It is fully expected by the committee that the office of the superintendent of public instruction will be provided for in the executive article. A majority of the committee feels strongly that the superintendent should be elected, and the committee has structured the educational article with this notion in mind. An elected superintendent provides a necessary direct link to the people which is important to the educational system.

> Section 11. BOARD OF REGENTS OF HIGHER EDUCATION. There shall be a board of regents of higher education, a body corporate, which shall govern and control the academic, financial, and administrative affairs of the Montana university system, and shall supervise and coordinate other public educational institutions which may be assigned by law. Said board shall consist of seven members appointed by the governor to six year overlapping terms, subject to confirmation by the senate, under regulations provided by law. The board shall appoint its executive officer and prescribe his term and duties. The governor and superintendent of public instruction shall be ex officio non-voting mem-

bers of this board.

COMMENTS

The second fundamental component of the proposed new state administrative structure for education is a board of regents of higher education. The same reasons which apply to the need for specialization and concentration of the public school board hold also for the board of regents. Higher education is fundamentally different from public school education--in goals, curriculum, financing, control, and operation--and it must be administered accordingly. There is very little in common between the public school system and higher education, other than a shared need to provide a smooth transition for students between the two systems.

A recognition of the particular needs and problems of higher education has led all but two states to establish separate state governing boards for higher education. Montana and Idaho remain the only two states which retain a single board for both public schools and the university system. Some states have more than two boards for their educational systems, and the generally recognized principle is that different educational tasks require different administrative structures.

As noted in the comments to the previous section, major studies of education in Montana have recommended the creation of two separate boards. The Durham Report on higher education (G. Homer Durham, The Administration of Higher Education in Montana, Helena, Montana, Legislative Council, 1958), for instance, described the difficulties of a state board which was unable to deal satisfactorily with both areas of education. As a result of the recommendation of the Durham Report, the legislature passed a law which divided the board into two parts, one of which sits as the state board of education, and one of which sits as the ex officio board of regents. This name-shuffling, however, has done little to alleviate the difficulty inherent in a dualistic board.

In addition to administrative questions, another fundamental reason exists for the establishment of a separate board of regents of higher education. Higher education is not simply another state service; the administrative structure of higher education cannot be considered an ordinary state agency. The unique character of the college and university stands apart from the business-as-usual of the state. Higher learning and research is a sensitive area which requires a particular kind of protection not matched in other administrative functions of the state.

Few would dispute the vital importance of academic freedom to the process of higher learning. Such freedom is the essence

of the American higher educational system. Only in an atmosphere of independent and unfettered inquiry can an objective pursuit of knowledge be conducted which is unhindered by prejudice and vested interest. The great contributions to both scientific and humanistic learning which have emerged from American colleges and universities can be attributed in large part to the freedom traditionally enjoyed by the teachers and students in such institutions.

This was the idea implicit in the founding of both private and public colleges and universities in the United States, and it is an idea which still prevails. The society as a whole accepts the principle unreservedly; rarely does a direct attack come upon the concept of free inquiry. However, a more subtle kind of coercion has made its appearance, and it is of the sort which is likely to become an even greater threat to the integrity of higher education in the future. This is the growing power of the centralized, bureaucratic state. Without overtly intending to curtail freedoms, the modern state has absorbed an increasing amount of power and control in the name of efficiency. A pervasive form of influence and manipulation has grown hand in hand with the emerging predominance of the government form and the computer.

A warning of this social trend was voiced in a landmark study of the condition of the American university conducted in the late 1950's under the chairmanship of Dr. Milton Eisenhower under a Ford Foundation grant. The study described a variety of creeping controls on university systems which have appeared in recent years across the country. It warns that, "strict" adherence by institutions of higher learning to a bewildering array of centralized bureaucratic controls will ultimately endanger the academic as well as the administrative freedom of the college" (Malcom Moos and Francis E. Rourke, The Campus and the State, Baltimore: The John Hopkins Press, 1959, p.6.). Among the sources of growing controls which increasingly impinge on universities are state budget offices, state auditors, comptrollers, purchasing departments, personnel offices, central building agencies, and a variety of older forms of control, such as legislative riders, which are being used in new ways to affect colleges and universities. The informal controls associated with these direct means often exert an even stronger influence on the educational process.

The study concludes that the maintenance of the system of higher education free from unnecessary bureaucratic and political interference is important not only to a healthy academic atmosphere but also to the administrative efficiency of the system of higher education:

> Creative research, by its very nature, requires freedom to move in a different direction if the facts uncovered require it. The farther away budget authority lies and the more time-consuming it is to get permission for

> such changes, the less will be accomplished. Research and instruction at the higher levels, are not services for which specifications can be written in advance, and for which one seeks the lowest bidder. They are venture capital investments where one successful strike in a multitude, either in the form of a new ideal, or a trained individual capable of producing them, may spell the difference between a forward-moving or a retrograding nation. (p. 316)

The power to coordinate and operate the system of higher education is one which belongs properly to an informed board of regents who have the knowledge and ability to determine rationally the course of higher education. Master plans have been suggested for the guidance of higher education in Montana but have failed to be applied because of a lack of power on the part of the board for their implementation. A board of regents empowered to carry out its informed judgments would be an important force for efficiency in the higher educational system.

It is this factor of efficiency which is highlighted in the study chaired by Dr. Eisenhower. The primary conclusion of the study is that freedom actually enhances efficient operation of a university system:

> [T]he fact that higher education very largely owes its autonomous position in state government to the belief that freedom promotes rather than limits efficiency.
> .....
> In the future there is one point that colleges and universities will need to make to the public and its elected representatives very persuasively. This is simply that the goal of efficiency in higher education can be realized without noneducational officials intervening in the fiscal affairs of colleges and universities. (pp. 313, 318)

Two factors in particular add to the efficiency of a university system which is relatively free to control its own affairs: long-range planning and administrative decentralization. There is a clear need for a strong board of regents to make long-range plans which are appropriate to the needs of higher education and free from short-term political whims. The limits of centralization in government operations have become apparent; particularly in such an unpredictable and flexible field as higher education, local and regional decision-making has demonstrated a greater efficiency than have ultra-centralized management techniques.

A board of regents which is given the power to control and manage its own affairs would enormously improve the planning situation for higher education in Montana. At present duplication and inter-institutional rivalry for funds is the rule. Under the proposed system the board of regents would submit a unified budget to the legislature for action. Competition for

funds which now occurs in the legislative halls would be resolved in advance by the board, which would have in mind a broad view of higher education. Similarly, the board would be in a position with knowledge and authority to eliminate wasteful duplication of courses and other endeavors which now drain university funds. Academic and administrative time which is now wasted in a multi-level budgeting process would be spared. Hard decisions concerning direction and operation of the entire university system could be made intelligently and objectively by such a board.

With these considerations in mind, the committee has developed the proposal for a board of regents of higher education embodied in section 11. The proposed board would fulfill the requirements for specialization, freedom, and efficiency described above. The board would have corporate status and would be charged with the function of controlling the academic, financial, and administrative affairs of the Montana university system. These are the characteristics and powers which such a board must necessarily have in order to be effective in carrying out the purposes for which it is designed.

In designating the board of regents a body corporate, the committee intends that the board be considered a legal entity which has powers as a board rather than as individuals and which is perpetuated as a separate administrative entity. With such status, the board gains a legal status appropriate to its task. One study notes:

> Many would interpret the granting of corporate status to a university as the highest achievement and fullest recognition of the independence of higher education. It is an acknowledgment of the freedom for objective inquiry necessary for an institution of higher education. [Hawaii, Legislative Reference Bureau, Hawaii Constitutional Convention Studies, Article IX: Education (Higher Education), Vol. 2, Honolulu: 1968, p.8.]

As a constitutional corporation, the board of regents would be presumed to exercise managerial control over its own internal affairs. Extensive studies which have been done on the constitutional status of boards of higher education indicate that the particular determination of powers and responsibilities of a board for a given state depend to a large degree on the particular history and academic structure in that state. (See especially Charles R. Cashmore, Barry L. Hjort, and Ronald R. Lodders, Constitutional Authority for Higher Education: A Legal Analysis, report submitted to the Education and Public Lands Committee, Montana Constitutional Convention, 1971).

It is interesting to note that the Montana Constitution of 1884 named the board "The Regents of the University of Montana" and designated it a "body corporate" [Art. IX, Sec. 12]. This language was changed when the concept of the state board was broadened in 1889 to include jurisdiction over other state educa-

tional institutions, [Art. XI, Sec. 8, Constitution of 1889].

Under the existing section 11, the Montana Supreme Court has declared that, "the board of education is a part of the executive department, and is but an agency of the state government" (State v. Brantton, 86 Mont. 200, 208 [1929]). In the same opinion, the court referred to the university as the "development arm" of the state. It is the committee's view that this is not an adequate description of a state board of regents nor of the character or function of a university. The proposed section would establish the board and the university system in roles appropriate to a modern, free system of higher education.

The board of regents is also granted supervising and coordinating powers over other institutions of higher education as may be assigned by law. This distinction between board powers with respect to the university system and other institutions of higher education is of particular importance to community colleges, which are presently controlled by local boards. The language leaves flexibility to the legislature to respond to future developments in higher education. The membership and terms of the board are identical to those of the board of public education; however, in contrast to the lower board, the board of regents is authorized to appoint its own executive officer.

> Section 12. STATE UNIVERSITY FUNDS. The funds of the state university and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be prescribed by law, and shall be guaranteed by the state against loss or diversion. The interest of said invested funds, together with the rents from leased lands or properties shall be devoted to the maintenance and perpetuation of these respective institutions.

COMMENTS

This section remains unchanged from section 12 of the existing Constitution. This provision has worked well in protecting the funds of the university system, and it is in accord with the conditions mandated in The Enabling Act for lands granted the university.

MINORITY PROPOSAL

BE IT PROPOSED BY THE EDUCATION AND PUBLIC LANDS COMMITTEE:

That the following section replace section 3 of the Education and Public Lands Majority Proposal:

ARTICLE

EDUCATION

Section 3. The public school fund shall forever remain inviolate. The public school fund and the funds of the state university and of all other state institutions of learning, from whatever source accruing, shall be safely and conservatively invested in public securities with the state, or in bonds of the United States, or in other securities fully guaranteed as to principal and interest by the United States, or in other such safe investments bearing a fixed rate of interest, as may be prescribed by law.

/s/ Lloyd Barnard /s/ Marjorie Cain /s/ Robert Noble

COMMENTS ON MINORITY PROPOSAL

ARTICLE ___

EDUCATION

Section 3. The public school fund shall forever remain inviolate. The public school fund and the funds of the state university and of all other state institutions of learning, from whatever source accruing, shall be safely and conservatively invested in public securities with the state, or in bonds of the United States, or in other securities fully guaranteed as to principal and interest by the United States, or in other such safe investments bearing a fixed rate of interest, as may be prescribed by law.

COMMENTS

A minority of the committee feels that, although unnecessary restrictions should be removed from the investment of state funds, nevertheless, security must be the predominant factor in the investment of school funds. To eliminate all restrictions except those adopted by statute would be to allow the school funds to come into possible jeopardy, in the case of, for instance, if the investment board were to emphasize the principle of growth over that of security. Due to the reliance of local districts upon an insured source of yearly funding, the minority feels that the greatest precautions must be taken in securing those public funds which are devoted to the support of education.

The minority, therefore, proposes that specific restrictions to guarantee the secure investment of school funds be included under section 3 of the proposed new article. This intention also requires a modification of the proposed article on investments. The addition of the phrase "not otherwise Constitutionally restricted" allows the requirements specified in the minority's proposed section 3 of the new Education article to be fulfilled.

MINORITY PROPOSAL

BE IT PROPOSED:

That the following be substituted for section 6 of the Majority Proposal of the Education and Public Lands Committee.

Section 6. AID PROHIBITED TO SECTARIAN SCHOOLS. Neither the legislative assembly, nor any county, city, town, or school district, or other public corporations, shall ever make directly any appropriation, or pay from any public fund or monies whatever, or make any grant of lands or other property in aid of any church, or for any sectarian purpose, or to aid in the support of any school, academy, seminary, college, university, or other literary, scientific institution, controlled in whole or in part by any church, sect or denomination whatever. This section shall not apply to funds from federal sources provided to the state for the express purpose of distribution to non-public education.

/s/ Gene Harlaugh /s/ John Toole /s/ Dan Harrington

Section 8. AID PROHIBITED TO SECTARIAN SCHOOLS. Neither the legislative assembly, nor any county, city, town, or school district, or other public corporations, shall ever make directly any appropriation, or pay from any public fund or monies whatever, or make any grant of lands or other property in aid of any church, or for any sectarian purpose, or to aid in the support of any school, academy, seminary, college, university, or other literary, scientific institution, controlled in whole or in part by any church, sect or denomination whatever. This section shall not apply to funds from federal sources provided to the state for the express purpose of distribution to non-public education.

COMMENTS

A minority of the committee proposes that the section 8 of the present Constitution be modified by deleting the words "or indirectly" from the first sentence and that a new sentence be added at the end of the section to read as follows: "This section shall not apply to funds from federal sources provided to the state for the express purpose of distribution to nonpublic education."

The minority subscribes to the position expressed in the body of the majority proposal in which equality of educational opportunity for all is stated as a primary goal. It is the conviction of the minority that this goal amounts to a hollow promise, unless some provision is made in our Constitution which will protect the rights of that sector of our society which is engaged in nonpublic education. There are presently 11,645 elementary and secondary students, or 6.3% of the total elementary and secondary students of the state enrolled in nonpublic schools. A total of 2,775 students, or 10% of the total higher education students of the state, are enrolled in nonpublic institutions of higher learning.

It is common knowledge that many nonpublic institutions are facing extreme difficulties in financing their institutions. Nationally, in 1950 over 50 percent of university and college students were enrolled in nonpublic institutions. In 1969 this figure had dropped to 28 percent. Many nonpublic elementary and secondary schools are also being forced to close.

Due to school closures, since 1964-65 the number of students enrolled in nonpublic elementary and secondary schools in Montana has dropped from 19,878 to 10,579, a cut in enrollment of almost half. In the same period 22 of the previous total of 64 nonpublic schools were forced to close their doors. (See Appendix G).

In an age when the state exercises vast economic powers and

when inflationary pressures are rising, the hopes for the survival of any nonpublic educational institutions become increasingly dim.

The result is not only a denial of educational opportunity and diversity, but also a significantly greater drain on public revenue than would be the case if the schools were allowed to survive through the types of aids permitted under the federal First Amendment. An example of the increased costs to taxpayers resulting from the closing of nonpublic schools is that of the recent closing of parochial schools (334 high school students; 160 junior high students; 336 elementary students) in Helena. The additional costs which resulted in Helena from the displacement of students from nonpublic to public schools without any increase in tax base has been estimated to be approximately $1,767,600 over the past three-year period (based on bond issue, permissive levy, voted amount, and deficiency). This does not include the additional cost to the state foundation program for the support of the additional students. In the state as a whole the estimated savings to state taxpayers resulting from students educated in nonpublic elementary and secondary schools is approximately $6,000,000 per year. A table showing the state-wide savings to taxpayers is included in Appendix H.

In a time when the nation's courts are insisting on education as a fundamental and basic right, and that equality of educational opportunity be measured by a corresponding equality of financial expenditure, it is incongruous to retain a Constitutional statement that might deprive a significant segment of our students of any aid available which might help to equalize their educational opportunity.

Education is by its very nature a public purpose. This is the reason why the state involves itself so fully in accrediting and setting standards for both public and nonpublic schools. The ability of a student to receive a secular education should not be hampered by his religious or other beliefs. Incidental aid which might accrue to religiously connected institutions should not preclude the major benefit to the child of the receipt of an education, any more than religiously affiliated hospitals should be denied public assistance because of possible indirect aid to a church.

Section 8 of the existing Constitution is among the most restrictive, if not the most restrictive, such Constitutional provision in the nation. In addition to a complete ban listing all possible sources of public aid to sectarian schools or for sectarian purposes (which is identical to the most stringently worded provisions in several other states), the Montana provision adds the words "directly or indirectly". This precludes even the kind of student benefit aid which has been accepted by the Federal Supreme Court.

It is the belief of the minority that the language contained

in section 7 of the present Constitution is unnecessarily stringent and poses a serious threat to the educational rights of students attending nonpublic educational institutions. The financing of education in America in the future is in a state of flux, but there is every indication that the federal government will become increasingly involved. A recent study by the National Educational Finance Project concludes:

> Whatever federal grants are made in the days ahead, they should not by-pass state governments; instead, federal grants for public schools should be made to the state educational agency for allocation to local schools in accordance with state plans. (National Educational Finance Project, Future Directions for School Financing, Gainesville, Florida: 1971, p. 35.)

Should revenue sharing, block grants, and other forms of federal financing, yet to be devised, fall within the jurisdiction of state control, nonpublic educational institutions might be seriously affected if such funds had to be restricted in accordance with the regulations of the present section 6.

In reply to those who are fearful of changing the present system lest state aid to parochial institutions violate the principle of separation of church and state, the minority wishes to point out that the First Amendment of the federal Constitution guarantees the enforcement of that principle. The First Amendment has a back-log of almost 200 years of legal interpretation. That interpretation has evolved through the years to a rather clear definition of the types of aid which are permissible and those which are not. The primary concerns expressed by the Court in its most recent cases on the subject are on the principles of non-entanglement and state neutrality. In Lemon v. Kurtzman (403 U.S. 602) the Chief Justice Burger gave the opinion of the Court which stated:

> Our prior holdings do not call for total separation between church and state; total separation is not possible in an absolute sense. . . .Judicial caveats against entanglement must recognize that the line of separation, far from being a "wall," is a blurred, indistinct and variable barrier depending on all the circumstances of a particular relationship. . . .
>
> In order to determine whether the government entanglement with religion is excessive, we must examine the character and purposes of the institutions which are benefited, the nature of the aid that the State provides, and the resulting relationship between the government and the religious authority. (Id. at 756-757)

In this case the Court ruled that state subsidized salaries for teachers of secular subjects in parochial schools violated

this principle of non-entanglement and therefore was not acceptable as a form of aid.

The minority proposal is in accord with the principles set forth in the First Amendment. What is at stake in the minority proposal is not separation of church and state, which is an issue of basic rights already delineated by the Federal Constitution and federal courts, but rather the issue of encouraging equality of educational opportunity.

Finally, the minority wishes to take the position that the language of the existing section 8 is rigid and inflexible, and is not in keeping with changing legal interpretations nor fluxuating social patterns. In order to protect our heritage of pluralism and foster the principle of equal educational opportunity, the minority report urges adoption of its proposal.

MAJORITY PROPOSAL

BE IT PROPOSED BY THE EDUCATION AND PUBLIC LANDS COMMITTEE:

That there be a new Article on Public Lands to read as follows:

ARTICLE ___

PUBLIC LANDS

Section 1. PUBLIC LAND TRUST, DISPOSITION. All lands of the state that have been or that may hereafter be granted to the state by congress, and all lands acquired by gift or grant or devise, from any person or corporation, shall be public lands of the state, and shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised; and none of such land, nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, be paid or safely secured to the state; nor shall any lands which the state holds by grant from the United States (in any case in which the manner of disposal and minimum price are so prescribed) be disposed, of except in the manner and for at least the price prescribed in the grant thereof, without the consent of the United States. Said lands shall be classified by the board of land commissioners in a manner prescribed by law. Any of said lands may be exchanged for other lands, public or private, which are equal in value and as closely as possible equal in area.

/s/ Richard Champoux
Chairman

/s/ Robert Noble
Vice Chairman

/s/ Lloyd Barnard

/s/ William Burkhardt

/s/ Marjorie Cain

/s/ Max Conover

/s/ Carl Davis

/s/ Gene Harbaugh

/s/ Dan Harrington

/s/ Robert Woodmansey

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COMMENTS ON MAJORITY PROPOSAL

Section 1. PUBLIC LAND TRUST, DISPOSITION. All lands of the state that have been or that may hereafter be granted to the state by congress, and all lands acquired by gift or grant or devise, from any person or corporation, shall be public lands of the state, and shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised; and none of such land, nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, be paid or safely secured to the state; nor shall any lands which the state holds by grant from the United States (in any case in which the manner of disposal and minimum price are so prescribed) be disposed of, except in the manner and for at least the price prescribed in the grant thereof, without the consent of the United States. Said lands shall be classified by the board of land commissioners in a manner prescribed by law. Any of said lands may be exchanged for other lands, public or private, which are equal in value and as closely as possible equal in area.

COMMENTS

In testimony on the issue of public lands, officials of The State Land Board described public lands as trust lands held by the state and stated that the income derived from these lands is credited to the state school fund or other respective purpose for which said land was granted. Sportsmen maintained that there is a lack of public access to public lands. The committee also heard from several witnesses on existing and proposed management practices on public lands.

The committee took into account the mandate of The Enabling Act of 1889 in drafting its proposal. It is the general view of the committee that the primary constitutional issue with regard to state lands is the designation of state responsibility for public lands as held in trust by the state to be disposed of as provided in the terms of the grant. Admittedly, some dispute as to the mandate of The Enabling Act has and will, in all probability, be raised. The "general public benefit" notion articulated in Thompson v. Babcock (147 Mont. 46) requires continual interpretation and specification. The question of just what is the "largest measure of legitimate and reasonable advantage to the state" remains open to further determination. The committee

emphasizes the singular mandate in The Enabling Act that the lands granted in section 10 were "for the support of common schools." The proposal embodies a fundamental protection of these lands entrusted to the state so that their disposition will be in accordance with the greatest public benefit, commensurate with the purposes for which the lands were granted.

This proposal expresses the committee's view of the best Constitutional method of serving public interest, granting powers, and providing for needed flexibility. Convinced of the need for sound and efficient management of state school lands, the committee delegated this responsibility in another section of the Constitution to the Board of Land Commissioners. The merits for such action are (1) success of present system and (2) need for flexibility. The economic success of the present system of land management is borne out by the fact that the state had as of June 30, 1970, $52,907,243 dollars in its permanent school fund, with almost $3,000,000 dollars coming in on deferred payments every year. Montana remains one of two or three states in the nation which has been wise enough to retain almost the entirety of its federally granted school lands and which, as a result, now reaps a substantial income from such lands for schools.

The committee decided to delete the Constitutional specification of land classes. House Joint Resolution #32 (Laws of Montana, 42nd Session, 1971, Vol. 11, p. 1709) expressed the sense of the legislature in the form of a recommendation to the Constitutional Convention that the board of Land Commissioners be given the authority to grant multiple use classifications and the power to change these classifications as the board deemed necessary. The committee agrees with the intent of this resolution to provide flexibility in management of public lands. No arguments were presented to the committee in opposition to such a change. The committee can foresee only benefits in the elimination of rigid Constitutional classifications.

The other area of change in the article was the inclusion of the sentence, "Any of said lands may be exchanged for other lands, public or private, which are equal in value and as closely as possible equal in area." Due to the fact that The Enabling Act was amended in 1932 to provide for such an exchange of lands, the committee proposes a Constitution that contains a provision consistent to the amended Enabling Act. Several witnesses pointed out the advantages which would accrue to the state from the ability to make judicious exchanges to consolidate state holdings.

The committee also eliminated sections 2 and 3 of the existing Constitution, Article XVII, on the grounds that they have been made obsolete by the proposed new language.

In summary, the committee has retained almost the entire first section of the Public Lands Article (Article XVII) of the present Constitution, with the inclusion of "exchange" of state

lands to add an important managerial power. The committee chose to eliminate Constitutional classifications for state lands due to the need for flexibility. Sections 2 and 3 were eliminated because they are obsolete or are matters of purely legislative concern.

MAJORITY PROPOSAL

BE IT PROPOSED BY THE EDUCATION AND PUBLIC LANDS COMMITTEE:

That there be a new Article on Investments to read as follows:

ARTICLE ___

INVESTMENTS

Section 1. UNIFIED INVESTMENT PROGRAM. The legislative assembly shall provide for a unified investment program for all public funds. The state may invest surplus funds of any political subdivision of the state when requested to do so by the governing board of that political subdivision. The legislative assembly shall designate a state officer or agency to accept or reject contributions to the state. The state shall keep a permanent record of all contributions to the state, and shall periodically make provision for commemoration of those benefactors. The legislative assembly shall establish regulations and limitations for the investment of public funds. An audit of the state investment program shall be conducted annually.

/s/ Richard Champoux
Chairman

/s/ Robert Noble
Vice Chairman

/s/ Lloyd Barnard
/s/ William Burkhardt
/s/ Marjorie Cain
/s/ Max Conover
/s/ Carl Davis
/s/ Gene Harbaugh
/s/ Pat Harrington
/s/ Robert Woodmansey

/s/ John Toole

COMMENTS ON MAJORITY PROPOSAL

Section 1. UNIFIED INVESTMENT PROGRAM. The legislative assembly shall provide for a unified investment program for all public funds. The state may invest surplus funds of any political subdivision of the state when requested to do so by the governing board of that political subdivision. The legislative assembly shall designate a state officer or agency to accept or reject contributions to the state. The state shall keep a permanent record of all contributions to the state, and shall periodically make provision for commemoration of those benefactors. The legislative assembly shall establish regulations and limitations for the investment of public funds. An audit of the state investment program shall be conducted annually.

COMMENTS

The relevant article of the existing Constitution (Article XXI) was jointly assigned to the Revenue and Finance Committee and the Education and Public Lands Committee. After due consideration of the provision in conjunction with the Revenue and Finance Committee, a majority of the Education and Public Lands Committee has decided to adopt replacement language similar to that proposed by the former committee.

The Education and Public Lands Committee is concerned with the security and protection of the public funds of the state, but recognizes the obsolete character of most of the existing article on the Trust and Legacy Fund. Due to the confused history of the fund and the statutory nature of most aspects of its investment, the committee feels that only a broad statement of investment policy is necessary. A unified state investment program is the most rational way to administer such funds, and it is a method which promises to increase the income from such monies over what has been realized in the past.

This proposed section differs from the majority proposal of the Revenue and Finance Committee in two major respects. First, the committee feels that it is important to allow investment of the funds of localities only at their own request. Secondly, due to the particular character of gifts and grants made to the educational system, the committee agrees that it is important to maintain records of such gifts and to commemorate the benefactors. Otherwise the majority of the Education and Public Lands Committee is in agreement with the proposed language and rationale of the majority of the Revenue and Finance Committee on this provision.

MINORITY PROPOSAL

BE IT PROPOSED BY THE EDUCATION AND PUBLIC LANDS COMMITTEE:

That the following sentence replace the first sentence of the Education and Public Lands Majority Proposal:

ARTICLE ___

INVESTMENTS

The legislative assembly shall provide for a unified investment program for all public funds not otherwise Constitutionally restricted.

/s/ Lloyd Barnard /s/ Marjorie Cain /s/ Robert Noble

COMMENTS ON MINORITY PROPOSAL

ARTICLE ___

INVESTMENTS

The legislative assembly shall provide for a unified investment program for all public funds not otherwise Constitutionally restricted.

COMMENTS

A minority of the committee feels that, although unnecessary restrictions should be removed from the investment of state funds, nevertheless, security must be the predominant factor in the investment of school funds. To eliminate all restrictions except those adopted by statute would be to allow the school funds to come into possible jeopardy, in the case of, for instance, if the investment board were to emphasize the principle of growth over that of security. Due to the reliance of local districts upon an insured source of yearly funding, the minority feels that the greatest precautions must be taken in securing those public funds which are devoted to the support of education. The addition of the phrase "not otherwise Constitutionally restricted" in the proposed investments article allows the requirements specified in the minority's proposed section 3 of the new education article to be fulfilled.

APPENDIX A

CROSS REFERENCES

EDUCATION ARTICLE PROPOSED SECTION	PRESENT ARTICLE AND SECTION
1	XI, 1, 6, 7
2	XI, 2
3	XI, 3
4	XI, 4
5	XI, 5
6	XI, 8
7	XI, 9
8	XI, 10
9	XI, 11
10	XI, 11
11	XI, 11
12	XI, 12

Public Lands Article

1	XVII, 1, 2, 3

Investments Article

1	XXI, (entire article)

APPENDIX B

PROPOSALS CONSIDERED BY COMMITTEE

The following delegate proposals were examined and considered by the Education and Public Lands Committee during its deliberations:

	Number of Proposal	Chief Sponsor	Subject Matter	Disposition
1.	11	Virginia Blend	Full State Funding	Intent included in part, Section 1
2.	29	Marian Erdmann	School Election	Intent incorporated Section 8
3.	41	John Leuthold	Public Aid	Intent incorporated in part, Sec. 6
4.	43	R. Champoux	Equal Educational Opp.	Incorporated in Section 6
5.	46	Mike McKeon	Public School Financing	Intent Incorporated
6.	49	C. Blaylock	Apportionment of School Funds	Incorporated in Section 8
7.	68	Carl Davis	Investment of School Funds	Incorporated in part in Sec. 1,3,5
8.	74	Max Conover	Investment of Public School Fund	Adopted with slight changes as Sec. 3
9.	85	G. Rollins	Body Corporate	Incorporated in part Section 11
10.	91	Marjorie Cain	Equal Educational Opportunity	Incorporated in part Section 1
11.	102	R. Kelleher	Financial Suppt. Private College	Rejected

12.	113	R. Roeder	Teachers' Salary Equity Board	Rejected
13.	128	M.N.Robinson	Appoint Board of Education	Rejected
14.	130	M.N.Robinson	Public Libraries	Incorporated in part in Section 1
15.	135	Carl Davis	Exchange of Public Lands	Adopted with slight changes as Public Lands Article
16.	142	John Toole	Two Boards	Incorporated in part in Section 11
17.	143	John Toole	Combine Sections 1 and 6	Intent incorporated in Section 1
18.	146	D. Bugbee	Board of Regents	Intent incorporated in part in Sec. 11
19.	164	G. Harbaugh	Section 8	Rejected in majority report. Adopted in minority report
20.	171	W. Burkhardt	Board of Regents body corporate	Intent adopted in Section 11
21.	175	G. Harbaugh	School Lands	Intent incorporated in part in Public Lands Article

APPENDIX C

WITNESSES HEARD BY COMMITTEE

Name - Affiliation - Residence - Subject

1. N. D. Ostrander - Seventh Day Adventist Churches - Helena - Public Aid to Non-Public Schools.
2. Dr. E. L. Lynn - citizen- Helena - Public Aid to Non-Public Schools.
3. Chadwick Smith - Montana School Boards Assoc. - Helena - Two Boards of Education.
4. Don Scanlin - Educator - Billings -Educational Philosophy.
5. C. R. Anderson - citizen - Dillon - Education in General.
6. Bill Cainan - Masons of Montana - Helena - Public Aid to Non-Public Schools.
7. Gladys Vance - PTA - Great Falls - General Education.
8. Lloyd Markell - Montana Education Assoc. - Helena - Article XI.
9. Harriet Meloy - Member of the State Board - Helera - Two Boards of Education.
10. Harry Axtmann - Supt. of Schools, Roosevelt County - Wolf Point - County Superintendents.
11. Clarice Beck - American Assoc. of University Women - Helena - Age Limit.
12. Robert Herrig - Supt. of Schools, Lincoln County - Libby - County Superintendents.
13. Margaret Brown - Supt. of Schools, Gallatin County - Bozeman - County Superintendents.
14. Ted Schwinden - State Land Commissioner - Helena - State Lands and public access.
15. Fred Johnson - citizen - Great Falls - Public Lands.
16. Dolores Colburg - State Supt. of Public Instruction - Helena

- All aspects of Education.

17. Maurice Hickey - Montana Education Association - Helena - Public Lands.

18. Fletcher Newby - Environmental Council - Helena - Public Lands.

19. Steven Colliton - State Low-Income Organization - Helena - Article XI, sections 5 and 7.

20. Robert Pantzer - President, University of Montana - Missoula - Two Boards.

21. Kenneth Sohyans - Mont. Assoc. for Retarded Children & Adults - Helena - Age limit.

22. Dr. William Purdell - College of Great Falls - Great Falls - Public Aid to Non-Public Schools.

23. John Shanahy - Montana Catholic Conference - Billings - Public Aid to Non-Public Schools.

24. Lyle Comer - Masons of Montana - Helena - Public Aid to Non-Public Schools.

25. John Eldredge - citizen - Helena - Public Aid to Non-Public Schools.

26. Jack Holt - citizen - Helena - Public Aid to Non-Public Schools.

27. John S. Piatt - Americans United - Great Falls - Public Aid to Non-Public Schools.

28. Ernest Neath - Masons of Montana - Helena - Public Aid to Non-Public Schools.

29. Leo Kottas - Masons of Montana - Helena - Public Aid to Non-Public Schools.

30. George Schotte - Carroll College - Helena - Public Aid to Non-Public Schools.

31. Rev. John Moes - Christian Reform Church - Conrad - Public Aid to Non-Public Schools.

32. Forrest Anderson - Governor - Helena - State Board of Education.

33. Robert Watt - Montana Student President's Assoc. - Helena - State Board.

34. Harry Gagher - Faculty Senate, EMC - Billings - Two Boards.

35. Polly Prechal - Faculty Senate, EMC - Billings - State Board.

36. James Short, President, WMC - Dillon - Two Boards.

37. Carl McIntosh - President, MSU - Bozeman - Two Boards.

38. James Kenny - Montana School Boards Assoc. - Helena - State Board of Education - One Board.

39. Dr. Larry Blake - Flathead Valley Community College - Kalispell - No. of Boards.

40. Vern Kailes - Miles City Community College - Miles City - No. of Boards.

41. Jim Hoffman - Dawson County Community College - Glendive - Description of Board's powers.

42. Arthur Hart - Vocational Rehabilitation - Helena - Vocational - Rehab in Constitution.

43. Jack Gunderson - State Representative - Power - State Supt.

44. Leroy Corbin - Montana Federation of Teachers - Butte - State Superintendent.

45. Rosemary Boschart - citizen - Billings - State Superintendent.

46. Erv. Gysler - Delegate - Fort Benton - Vo Tech.

47. Maurice Driscoll - Director, Vo-Tech - Butte - Vo-Tech.

48. William Korizek - Director, Vo-Tech - Helena - Vo-Tech.

49. Jim Carey - Director - Great Falls Vo-Tech Center - Vo-Tech.

50. Gene Downey - Director - Missoula Vo-Tech Center - Vo-Tech.

51. Ray Heley - Director - Billings Vo-Tech Center - Vo-Tech.

52. Gordon Simmons - Missoula County High School - Missoula - Local Control of Vo-Tech Centers.

53. John Giese - Missoula County High School - Missoula - Vo-Tech.

54. Einar Broston - Montana Vocational Educators Assoc - Helena - Vo-Tech Centers.

55. Grace Hanson - County Supt., Flathead - Kalispell - County Superintendents.

56. Opal Piggott – Lobbyist for Co. Supt. – Helena – County Superintendents.

57. Dorothy Simons – Lewis & Clark Co. Supt. – Helena – County Superintendents.

58. Carolyn Krojn – Missoula Co. Supt. – Missoula – County Superintendents.

59. Earl Barlow – Office of Public Instruction – Helena – Indian Education.

60. Jerit Corcoran – Rocky Boy Supt. – Box Elder – Equal Education for Indians.

61. Frances Satterthwaite – Inter-Tribal Policy Board Lobbyist – Helena – Indian Education.

62. Frank Shone – School District No. 1 – Helena – Indian Education.

63. Dwight Billedeaux – Eastern Montana College – Billings – Indian Education.

64. Robert Jovick – Montana Student President's Assoc. – Bozeman – Student's Concern in Education.

65. Frank Dudas – Associated Students – MSU – Bozeman – Students Concern in Education.

66. Wayne Gildrey – Montana Student President's Assoc. – Students Concern.

67. John Christensen – Associated Students – U of M – Missoula – Students Concern.

68. Stan Juneau – Indian Club, EMC – Billings – Indian Education.

69. Calvin Herrera – Indian Club, EMC – Billings – Indian Education.

70. Clara Lee McMakin – Indian Club, EMC – Billings – Indian Education.

71. Dale Kindness – Indian Club, EMC –Billings – Indian Education.

72. Kaycla Adele Ader – EMC – Billings – Indian Education.

73. Frank LaMere – EMC – Billings – Indian Education.

74. Leroy Berven – U of M – Missoula – Students Concern.

75. John Murphy – Student – Missoula – Students Concern.

76. Tom Daily - Student - Missoula - Students Concern.

77. Patrica Denny - Student - Missoula - Students Concern.

78. Ulysses Doss - Professor, U of M - Missoula - Equal Educational Opportunity.

79. Harold Gray - University of Montana - Missoula - Equal Educational Opportunity.

80. Jim Graham - citizen - Miles City - Equal Educational Opportunity.

81. John Mansfield - citizen - Great Falls - Equal Educational Opportunity.

82. James Shea - citizen - Great Falls - Equal Educational Opportunity.

83. Barnie Old Coyote - Montana State University - Bozeman - Equal Educational Opportunity.

84. D. D. Cooper - Montana Education Association - Helena - Equal Educational Opportunity.

85. James Haveth - Board of Investments - Helena - Trust and Legacy Fund.

86. Marjorie King - Member State Board - Kinnett - State Board of Education.

87. Fred Mielke - Member State Board - Havre - State Board of Education.

88. John French - Member of State Board - Ronan - State Board of Education.

89. Raymond Heakanson - Montana Assoc. of School Administrators - Livingston - Financing.

90. John Campbell - Montana School Boards Assoc. - Helena - Educational Financing.

91. Mike Billings - Office of Public Instruction - Helena - Financing.

92. Mike Meloy - Office of Public Instruction - Helena - Foundation Program - Financing.

93. John Kay - citizen - Hamilton - Financing.

94. James Cox - U of M, School of Education - Public Aid to Non-Public Schools.

95. Earle Thompson - State Library Commission - Missoula - Libraries.

96. Doris Lavies - American Assoc. of University Women - Libraries.

97. Robert Gopher - citizen - Great Falls - Indian Education.

98. George Darrow - State Representative - Billings - section 1.

99. Dr. Bill Fisher - U of M, School of Education - Public Aid to Non-Public Schools.

100. Ray Gulick - citizen - Joplin - Education in general.

ROLL CALLS ON EDUCATION PROPOSAL

MEMBER	SECTION	1	2	3	4	5	6	7	8	9	10	11	12		TOTAL Y	TOTAL N	TOTAL A
CHAMPOUX, Richard		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		12	0	0
NOBLE, Robert		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		12	0	0
BARNARD, Lloyd		Y	Y	Y	Y	Y	Y	Y		Y	N	Y	N		9	2	
BURKHARDT, William		Y	Y	Y	Y	Y	Y	Ab	Ab	Y	Y	Y	Y		10		2
CAIN, Marjorie		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		12	0	0
CONOVER, Max		Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y		11	1	0
DAVIS, Carl		N	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y		10	1	0
HARBAUGH, Gene		Y	Y	Y	Y	Y	N	N	Y	N	Y	Y	Y		9	3	0
HARRINGTON, Dan		Y	Y	Y	Y	Y	N	N	Y	N	Y	Y	Y		9	3	0
WOODSMANSEY, Robert		Y	Y	Y	Ab	Y	Y	Y	Y	N	N	Y	Y		9	2	1
TOOLE, John		Ab	Ab	Ab	Ab	Y	N	Ab	Ab	Ab	Y	Ab	Ab		2	1	9
	YEA	9	10	10	9	11	8	7	7	7	8	10	9				
TOTAL	NAY	1					3	2		3	3		1				
	ABSENT	1	1	1	2			2	3	1		1	1				

ROLL CALLS ON _____ PROPOSAL

MEMBER	SECTION	Public Lands				Investments									TOTAL Y	TOTAL N	TOTAL A
CHAMPOUX, Richard		Y				Y									2	0	0
NOBLE, Robert		Y				Y									2	0	0
BARNARD, Lloyd		Y				N									1	1	0
BURKHARDT, William		Ab				Ab									0	0	2
CAIN, Marjorie		Y				Y									2	0	0
CONOVER, Max		Y				Y									2	0	0
DAVIS, Carl		Ab				Ab									0	0	2
HARBAUGH, Gene		Y				Y									2	0	0
HARRINGTON, Dan		Y				Y									2	0	0
WOODMANSEY, Robert		Y				Y									2	0	0
TOOLE, John		Ab				Ab									0	0	2
TOTAL	YEA	10				9											
	NAY					1											
	ABSENT	1				1											

APPENDIX I

OFFICE OF THE STATE SUPERINTENDENT

February 16, 1972

To: Richard Champeux, Chairman, Education Committee

From: Mike Billings, Director, Financial Support for Schools /s/ Mike Billings

Subject: Request for a fiscal note concerning proposed new wording of Article XI, section 5.

If the wording in Article XI, section 5 is changed in such a way that the I & I money is distributed to the elementary and secondary schools of the state (in place of to the public schools according to the 6-20 age census), no cost increase will be realized in administering the distribution of the funds. In fact, a substantial cost reduction would be realized, provided that the legislature includes the I and I money in the state equalization aid account. This act would eliminate the current costly annual practice of distributing the I and I money in March. This practice presently causes the school districts to spend a cumulative total of about $50,000 annually to collect the census, and causes the Office of the Superintendent of Public Instruction to expend about $3,000-$5,000 to process the census.

Thus, if the wording of Article XI, section 5, is changed as indicated, an annual savings of approximately $53,000-$55,000 could very well be realized by the education establishment in Montana. Under no conditions would the proposed section lead to increased cost of administration at the state or local levels.

MGB:kb

FUNDS GRANTED TO MONTANA NONPUBLIC EDUCATIONAL INSTITUTIONS UNDER SELECTED FEDERAL PROGRAMS

1. ESEA Title 1: Programs for educationally deprived children.
Federal Guidelines: Educationally deprived children in nonpublic schools may participate, although no funds can be paid directly to a nonpublic school.

Total amount paid to Montana public schools: $3,317,276
" " " " " nonpublic " : 0
(However, 6% of participating children were nonpublic school children in FY 1970)

2. ESEA Title 2: Texbooks supplied on permanent loan basis.
Federal Guidelines: Nonpublic schools eligible to order books from a list supplied by Superintendent of Public Instruction.

Total amount allotted to Montana public schools: $155,462
" " " " " nonpublic " : 5,775 (5.5%)

3. ESEA Title 3: Supplementary educational centers and services, including counseling, remedial instruction, experimental educational programs, etc.
Federal Guidelines: No funds can be granted directly to nonpublic schools, but nonpublic school children can participate in projects administered by public schools.

Total amount allotted to Montana public schools: $532,198
No estimate provided of nonpublic children participating; no funds allotted to nonpublic schools.

4. ESEA Title 6: Special education training for teachers and students.
Federal Guidelines: Nonpublic school teachers eligible for training funds and nonpublic school children eligible to participate in programs run by public schools.

Total amount allotted to Montana public schools: $262,279.
No estimate made of nonpublic school children participating; no funds allotted to nonpublic schools.

5. NDEA Title 3: Federal aid to higher education, the arts, etc.
Federal Guidelines: Nonpublic schools not allowed to participate in part of program administered by the Superintendent of Public Instruction, but nonpublic schools can make direct application to U.S. Office of Education.

Total amount allotted to Montana public schools: $207,298.
None allotted to Montana nonpublic schools through the Superintendent's Office. Unknown amount granted directly to nonpublic schools.

---

6. MDTA Title 2: Manpower development and vocational training.
Federal Guidelines: Act provides that training may be done in nonpublic schools if they offer comparable quality and competitive costs, if the training is not available in public institutions, or if there is a long waiting period for entrance to public schools.

Total amount allotted to Montana public schools: $1,359,000
" " " " " nonpublic " : 114,918 (9.5%)

7. HEFA Title 1: Building grants to institutuions of higher education.
Federal Guidelines: Funds may be granted for construction purposes to nonpublic institutions.

Total amount allotted to Montana public institutions: $6,341,001
" " " " " nonpublic " : 1,009,246
(13.7%)

Total amount allotted to Montana public schools in all of the above programs: $5,833,513

Total amount allotted to Montana nonpublic schools in all of the above programs: $ 120,693
(2%)

(plus an undetermined number of nonpublic school children who participate in public school-sponsored programs.)

Total amount allotted to Montana public institutions of higher education in the above program: $6,341,001

Total amount allotted to Montana nonpublic institutions of higher education under the above program: $1,009,246

(13.7%)

($ in thousands)

CARROLL COLLEGE	1964	1965	1966	1967	1968	1969	1970
Higher Education Facilities Act, Title I (Grants for construction to undergraduate institutes)		$129,620	$ 15,079		$405,557		
Higher Education Facilities Act, Title III (Loans for construction to undergraduate institutes)			480,000		492,000		
Cuban Loans			8,865	$ 5,200	1,750	$ 500	$ 500
Educational opportunity Grants				34,680	59,300	91,760	108,814
National Defense Student Loan	$ 76,006	73,800	122,085	169,303	163,315	165,339	145,595
College Work-Study Program			24,944	103,383	197,479	274,275	277,582
Higher Education Act, Title I (Community Service and Continuing Education)				75			500,000

($ in thousands)

	1964	1965	1966	1967	1968	1969	1970
COLLEGE OF GREAT FALLS							
Higher Education Act, Title VI-A (Special Equipment)				$ 1,224	$ 3,464	$ 3,731	
Higher Education Act, Title III (Developing Institutions)				54,908			
Educational Opportunity Grants				19,170	38,300	59,000	$ 45,121
National Defense Student Loan	$ 38,624	$ 36,000	$ 74,822	86,619	62,282	80,881	65,409
College Work-Study Program			11,908	56,079	48,851	74,772	115,267
Higher Education Act, Title I				16,938			
ROCKY MOUNTAIN COLLEGE							
Higher Education Facilities Act, Title I (Grants)				463,719			
Higher Education Facilities Act, Title III, (Loans)				593,000			
Higher Education Act, Title VI-A				1,945			
Educational Opportunity Grants				18,160	35,800	45,560	39,504

($ in thousands)

	1964	1965	1966	1967	1968	1969	1970
ROCKY MOUNTAIN COLLEGE (Con't.)							
College Work-Study Program			$ 5,540	$14,585	$26,786	$63,683	$52,534
Higher Education Act, Title I					13,863		1,367
National Defense Student Loan	$ 40,000	$ 45,250	63,900	76,794	56,770	51,137	43,326

APPENDIX G

NON-PUBLIC SCHOOL ENROLLMENT
BY GRADE

YEAR	TOTAL K-8	TOTAL 9-12	Spec. Ed.	State Total
1964-65	---------	----------	--	19,878
1967-68	12,776	4,108	43	16,884
1968-69	11,306	3,788	30	15,094
1969-70	8,616	3,340	--	11,956
1970-71	8,204	3,205	13	11,409
1971-72	7,439	3,140	--	10,579

Non-Catholic Private Schools	Montana Parochial Schools	
27	Total Number of Schools	46
1380	Total Number of Students	10,265
80	Total Number of Teachers	533
$845,568	*Total Savings to Taxpayers	$6,216,132
	(Estimated Biennial Savings)	$13,000,000

	No. of Schools	No. of Parochial Students	Savings to taxpayers by parochial schools*
Billings	5	1567	$ 908,360
Butte	3	1202	798,108
Great Falls	7	2057	1,364,081
Missoula	4	885	528,732
Anaconda	4	1160	729,013
Bozeman	2	136	85,162
Kalispell	1	192	96,192
Havre	1	373	186,873
Glasgow	1	196	88,200
Glendive	1	235	105,985
Lewistown	2	268	137,797
Livingston	1	165	82,500
Miles City	2	465	244,131
Deer Lodge	1	99	49,005
Malta	1	96	46,080
Shelby	1	100	52,400
Sidney	1	98	53,116
Wolf Point	1	132	62,964
Hardin	1	126	71,316
Pryor	1	51	30,600
Hayes	2	81	65,514
Ashland	2	474	365,375
St. Ignatius	1	107	64,628
TOTALS	46	10,265	$6,216,628

*Dollar amounts are computed for each school district by average per pupil cost for 1969-70. Value of property and buildings not included.

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

LOCAL GOVERNMENT

COMMITTEE PROPOSAL

NO. XI

Date Introduced: February 19, 1972

/s/ Oscar I. Anderson, Chairman

/s/ Virginia H. Blend, Vice Chairman

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Date: February 19, 1972

To: MONTANA CONSTITUTIONAL CONVENTION

From: Local Government Committee

Ladies and Gentlemen:

The Local Government Committee submits herewith its unanimous proposal for a new local government Article. The proposal is intended to replace in their entirety the present Article XVI ("Counties--Municipal Corporations and Offices") and Article XIX, section 6 (dealing with county offices).

The committee was in general agreement that a new local government article should provide flexibility, but was divided on how best to attain this goal. This proposal tends to work with the existing local government structure of cities, towns and counties and seeks to achieve improvement by encouraging experimentation in local government powers and form. Strong minority support originally was voiced in the committee for a proposal by Delegate Franklin Arness to replace the existing city, town, county and school district structure with a new one-level district structure.

Eventually, each of the eleven committee members voted for the adoption of this proposal. In signing this report, however, a committee member does not necessarily endorse each and every statement in it.

This proposal was adopted after consideration was given to nearly 3,000 citizen suggestions and 19 delegate proposals. The committee expresses its thanks to the citizens for their interest

and to the delegates who submitted proposals, the intent of which influenced the final proposal to a great degree.

The committee utilized the services of the following people in addition to its members: Mrs. William L. Romine, committee secretary; Miss Pat Chvatal, a Carroll College senior, intern, and Jerry Holloron, committee research analyst.

The committee believes this proposal provides a much improved Constitutional framework for local government in Montana and urges its adoption by the Constitutional Convention.

/s/ Oscar L. Anderson
Chairman

/s/ Virginia E. Blend
Vice Chairman

MAJORITY PROPOSAL

BE IT PROPOSED BY THE LOCAL GOVERNMENT COMMITTEE:

That there be a new Article on Local Government to read as follows:

ARTICLE__

LOCAL GOVERNMENT

Section 1. DEFINITION. The term "local government units" includes, but is not limited to, counties and incorporated cities and towns. Other local government units may be established by law.

Section 2. COUNTIES. The counties of the state of Montana as they exist at the adoption of this Constitution are the counties of the state. County boundaries shall not be changed or county seats transferred until approved by a majority of those voting on the question in each county affected.

Section 3. FORMS OF GOVERNMENT. The legislature shall provide by law for the government of local government units and for procedures of incorporating, classifying, merging, consolidating, and dissolving such units and of altering their boundaries. The legislature shall provide by law for optional or alternative forms of government for each unit or combination of units to enable a unit or combination of units to adopt, amend or abandon an optional or alternative form by a majority of those voting on the question.

One optional form of county government includes, but is not limited to, the election of three county commissioners, a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a coroner, and a public administrator whose terms, qualifications, duties and compensation shall be prescribed by law. The Board of County Commissioners may consolidate two or more offices. The Boards of Commissioners of two or more counties may provide for a joint office and for the election of one official to perform the duties of that office in the respective counties.

Section 4. GENERAL POWERS. Local government units not exercising self-government powers under sections 5 and 6 shall have the following general powers:

(1) Incorporated cities and towns shall have the powers of a municipal corporation and such legislative, administrative, and other powers as provided or implied by law.

(2) Counties shall have such legislative, administrative and other powers as provided or implied by law.

(3) The powers of incorporated cities and towns and counties shall be literally construed.

(4) Other local government units shall have such powers as provided by law.

Section 5. SELF-GOVERNMENT CHARTERS. The legislature shall prescribe procedures and may set limits under which a local government unit or combination of units may frame, adopt, amend, revise or abandon a self-government charter with the approval of a majority of those voting on the question. The prescribed procedures, however, shall not require approval of a charter by a legislative body.

Charter provisions with respect to a local government unit's executive, legislative and administrative structure and organization shall be superior to statutory provisions.

Section 6. SELF-GOVERNMENT POWERS. Local government units adopting self-government charters may exercise all powers not prohibited by this Constitution, by law or by charter.

This grant of self-government powers may be extended to other local government units through optional forms of government provided for in section 3.

Section 7. INTERGOVERNMENTAL COOPERATION. A local government unit by act of its governing body may, or, upon being required by initiative or referendum, shall cooperate, consolidate or agree in the exercise of any function, power or responsibility with, or share the service of an officer, or transfer or delegate any function, power or responsibility or duties of an officer to one or more other local government units, school districts, the state or the United States, unless prohibited by law or charter.

Section 8. REVENUE SHARING. Nothing in this Constitution shall prohibit the state from sharing revenue with local government units or the units from participating in revenue sharing with the state or the United States.

Section 9. INITIATIVE AND REFERENDUM. The initiative and referendum powers reserved to the people by the Constitution shall be extended by law to the qualified voters of each local government unit.

Section 10. RECALL. All elected public officials of local government units are subject to recall by the voters of the unit from which elected. Procedures for recall shall be prescribed by law.

Section 11. VOTER REVIEW OF LOCAL GOVERNMENT. The legislature shall within four years of the adoption of this Constitution provide for procedures by which each local government unit either separately or jointly shall review the government structure of the local unit or joint unit and shall submit one alternative form of government to the voters at the next general or special election. The legislature shall provide for a review procedure each ten years after the first election.

/s/ Oscar L. Anderson
Chairman

/s/ Virginia H. Blend
Vice Chairman

/s/ Franklin Arness

/s/ Arnold W. Jacobsen

/s/ Clark E. Simon

/s/ Marian S. Erdmann

/s/ Thomas M. Ask

/s/ Mrs. Thomas "Katie" Payne

/s/ M. Lynn Sparks

/s/ George W. Rollins

/s/ Lucile Speer

COMMENTS ON COMMITTEE PROPOSAL

"Flexibility" and "accountability" best describe the goals embodied in the proposal of the Local Government Committee.

The proposal aims at creating the widest possible array of local government forms so that local structure may be tailored to local needs. It provides for new self-government powers that may be exercised on the local level and gives a Constitutional boost to local efforts to eliminate costly and inefficient duplication of services and functions.

At the same time, the proposal requires accountability from local government units. Each new form of government authorized under the proposal would require the approval of local voters before it could be implemented. Local governments could exercise self-government powers only with the approval of local residents. County boundaries could be changed only if a majority of the affected residents agree. The people would be guaranteed the powers of initiative, referendum and recall on the local level.

Although the proposal would not force Montanans to change their local governments, it would force them to closely examine the local units with an eye toward improving them. This examination is provided for in a unique "voter review of local government" feature which--at the least--should pay huge dividends in terms of increased voter awareness in and concern for local government.

The length of the present local government provisions is more than cut in half by this proposal. Statutory material concerning indebtedness of new counties, county commissioner districts and county office location is deleted. The form of county government now in effect in 55 counties is mentioned--but only as one of what hopefully will be several optional forms of county government.

But the real "news" in the proposal is its incorporation of new devices to make local governments more responsive and responsible. Totally new provisions are added allowing local citizens to design their own form of local government, to increase local authority and responsibility and to end needless duplication of local services.

The Local Government Committee did not set out to replace the thinking of 1889 with that of 1972. Rather, it attempted to replace the thinking of 1889 with a broad framework that would allow implementation of the thinking of 1990, 2010, and 2072, as well as that of 1972. The committee believes this proposal creates that framework.

Section 1. DEFINITION. The term "local government units" includes, but is not limited to, counties and incorporated cities and towns. Other local government

units may be established by law.

COMMENTS

The present Montana Constitution creates considerable confusion in its scattergun use of terminology concerning local government. Such imprecise Constitutional terminology has resulted in confusion and court litigation. In an attempt to avoid this problem, section 1 accepts "local government units" as a generic term and specifies that counties and incorporated cities and towns fall within its meaning. However, the section specifically authorizes the legislature to create other local government units, thus providing freedom for the legislature to meet future needs that cannot be met by the traditional city or county structures. Certain special districts, for example, might be appropriately designated as "local government units" by the legislature.

The committee believes that section 1 will discourage litigation and avoid confusion concerning the rest of the Local Government Article; it also recommends that terminology corresponding to that used in this section be incorporated in other articles of the new Constitution when local government units are discussed.

> Section 2. COUNTIES. The counties of the state of Montana as they exist at the adoption of this Constitution are the counties of the state. County boundaries shall not be changed or county seats transferred until approved by a majority of those voting on the question in each county affected.

COMMENTS

Section 2, admittedly controversial, provides that the present county boundaries and county seats will be retained unless changed by a majority of those voting on the question in each county affected. County "A" could be consolidated with county "B" only if a majority of those voting on the question in <u>each</u> county approves. Thus, a large county could not "swallow" a small county with the latter's permission.

The proposed section combines sections 1, 2 and 8 of Article XVI of the present Constitution. Other than deletion of statutory material, the basic intent of these sections is retained--with one exception. The present language (sections 2 and 8) requires approval of a majority of the <u>qualified electors</u> of the county affected before a county boundary can be changed or a county seat transferred; the proposed section 2 would require approval of a majority of <u>those voting</u> on the question.

The difference can be quickly seen. Under the present provision, for example, if a county to be consolidated had 5,000 "qualified electors" but only 3,000 of them vote on the consoli-

datich question, a majority of the 5,000 (or 2,501), rather than a majority of the 3,000 (or 1,501), apparently would have to favor consolidation to meet the Constitutional restriction. Under the proposed language, on the other hand, a majority of those voting--or 1,501--would be required.

In substituting the less stringent--but more common--majority requirement, the committee endorses the reasoning that persons who do not vote on an issue should not be able to thwart the will of those who do. Let the proponents and opponents of county consolidation or county seat transfer go to the polls and let the majority rule.

County Boundaries

Calls for county consolidation--both nationwide and statewide--have gone unanswered, despite their frequency during the Twentieth Century. Indeed, the number of counties nationwide has remained almost constant in the last 40 years, despite frequent complaints that many counties lack the population and economic base to be viable units of local government.

If judged by national standards, certainly many of Montana's 56 counties are too sparsely populated to meet the tests of viability. But who should be the final judge of whether a county is too large or too small and of whether it should be consolidated with another? The Local Government Committee believes this choice must be left to the voters of the counties affected.

Therefore, section 2 allows changes in county boundaries only if approved by a majority of those voting on the question in each county affected. The committee considered leaving the matter of county boundaries entirely to the legislature, but decided that the authority would be more appropriately lodged in the people of the affected counties. After all, if sparsely populated counties are as inefficient and uneconomical as their critics claim, certainly the residents of those counties soon will be clamoring for county consolidation because of high tax bills and insufficient local government services.

It should be stressed that the proposed section 2 does not prevent county consolidation. It simply requires that any such boundary change must be approved by the persons most directly affected--the residents of the counties concerned. It also should be noted that the proposed Local Government Article allows ways short of total consolidation in which counties with dwindling population and tax base can be aided. Under sections 3 and 5, a wide range of structural options can be provided, including one or more directed toward those counties that do not need the full range of county offices and services. Indeed, Petroleum County--the county with the smallest population in the state--already makes successful use of a county manager form of government. In addition, the broad language of section 7 should encourage counties to band together--and to join with cities and

towns within their boundaries--to provide more efficient, economical government services.

Provisions in the present Constitution (Article XVI, section 3) concerning the division of debt when new counties are formed were deleted from this proposal on the basis that they can be provided by legislation--if they ever are needed.

County Seats

Constitutional provisions protecting county seats from being changed by legislative action are common among the 50 states. section 2 simply substitutes a concise statement of the protection now found in Article XVI, section 2 and Article V, section 26. The present Constitution's requirement that county offices must be kept at the county seat (Article XIX, section 6) was deleted from the proposal. Such a requirement might prevent counties from sharing officers and setting up branch county offices. To the extent that such a requirement is needed, it can be provided for by legislation.

> Section 3. FORMS OF GOVERNMENT. The legislature shall provide by law for the government of local government units and for procedures of incorporating, classifying, merging, consolidating, and dissolving such units and of altering their boundaries. The legislature shall provide by law for optional or alternative forms of government for each unit or combination of units to enable a unit or a combination of units to adopt, amend or abandon an optional or alternative form by a majority of those voting on the question.
>
> One optional form of county government includes, but is not limited to, the election of three county commissioners, a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a coroner, and a public administrator whose terms, qualifications, duties, and compensation shall be prescribed by law. The board of County Commissioners may consolidate two or more offices. The boards of Commissioners of two or more counties may provide for a joint office and for the election of one official to perform the duties of that office in the respective counties.

COMMENTS

Section 3 aims at allowing the legislature to provide the broadest possible range of forms of local government for counties, cities, towns and other local government units, including consolidated forms. Virtually every national and state authority on local government urges such flexibility; indeed, the Montana Constitution (Article XVI, section 7) already gives the legislature broad powers to provide "any plan, kind, manner or form"

of local government.

The intent of section 3 is to offer just as broad freedom to the legislature to provide various forms of local government as is allowed under the present section 7. Because of that intent, the committee considered retaining the present language of section 7; this idea eventually was rejected because the present wording is unclear and confusing. It is hoped that section 3's straightforward direction to the legislature to provide optional and alternative forms of government will result in a greatly expanded offering to the local government units in Montana.

The possibilities that could be provided under section 3 are great. At present, only three forms of city government (mayor-council, commission, and commission-manager); two forms of county government (the traditional form and county manager), and one general form of city-county consolidation are authorized by statute in Montana. Other states offer considerably more alternatives. New Jersey, for example, employs what has been called the "cafeteria-style" form of local government options, under which a local unit may choose different alternatives within a form of government offered by the legislature. Section 3 was drafted to allow such a flexible "cafeteria" in Montana, too. Thus, the legislature could offer the mayor-council form of government but leave to the locality the question of whether to elect or appoint a city treasurer, police judge and other city officers. In this regard, it should be noted that section 3 specifically directs the legislature to provide forms of government which can be amended, as well as adopted and abandoned, by a vote of the local residents.

Section 3 provides the legislature with authority to meet the rapidly shifting governmental needs of vastly different units of local government. For example, the legislature under section 3 could provide streamlined forms of county government specially suited for areas in which population is dwindling and a variety of forms of consolidated government for areas where virtually all of a county's population is urban.

Section 3 clearly states that any optional or alternative plan will go into effect on a local level only after it has been approved by the voters. The legislature is directed to offer choices of government structure for local government units; the voters of those units have the final control over what type of structure they select.

Present County Government Form

Section 3 provides that one form of optional government available to counties shall be what might be called the "traditional form"--that structure now used in 55 of the state's 56 counties. This form of government--including 13 elected officials--has been spelled out in Montana's Constitution since 1889. Similar forms receive Constitutional recognition in most

other states.

The question facing the Local Government Committee was whether to continue the present Constitutional emphasis on the "traditional" form of county government or to eliminate any Constitutional mention of the "traditional" form. The committee believes its solution to the problem is both wise and workable.

Section 3 emphasizes the legislature's broad power to offer optional and alternative forms of government, subject to local voter approval. But it provides that one of these optional forms must be the "traditional" form of county government. In other words, section 3 assures the people that they may, if they wish, continue to operate under their present county government structure, while at the same time encouraging counties to adapt their government structure to local needs. Under section 3, the "traditional" structure of county government might best be described as an "assured option."

And section 3 builds flexibility even within the "traditional" option. That is accomplished in two ways:

--The board of County Commissioners is empowered to consolidate offices within the county. This power already is contained in the present Constitution (Article XVI, section 5) and has received limited application, most notably in the frequent combination of the offices of sheriff and coroner.

--The boards of County Commissioners of two or more counties are authorized to provide for a multicounty office. For example, the commissioners of three sparsely populated counties might agree to elect one coroner to serve all three counties.

The offices of county attorney and clerk of district court, also mentioned in the proposed judicial article, are enumerated in section 3 for the express purpose of making the offices eligible for inter-county and multicounty consolidation. The Local Government Committee strongly recommends that the judicial article be worded so as not to foreclose the possible consolidation of these two offices with others as provided under section 3.

Eliminated from the provision for the "traditional" plan are the present complicated provisions for overlapping terms, procedures by which county offices may be consolidated and the method of filling vacancies in county offices. If needed, these procedures may be outlined by law. More specifically, it is the intent of the committee that the language allowing the legislature to set qualifications for the county commissioners should allow the election of commissioners from districts, as is now the case.

Section 3 omits the present prohibition against county treasurers succeeding themselves in office.

The committee believes it is clear that the provisions of

section 3 concerning a majority vote on a new form of government in no way will weaken section 2, which requires a majority vote in each county affected when county boundaries or county seats are changed. If a new plan of government involves two or more counties to the extent that they would be consolidated, it is the intent of the Local Government Committee that section 2 would control, and a majority vote in each county would be required. It should be noted that the present Constitution (Article XVI, sections 7 and 8) also contains different majority requirements for form of government (section 7) and boundary changes (section 8).

"Incorporating...Dissolving"

Section 4 directs the legislature to provide procedures for "incorporating, classifying, merging, consolidating and dissolving" units of local government and of altering their boundaries. The importance of these factors dictates their Constitutional mention. For example, the committee wishes to clearly direct the legislature to classify local government units in order to deal with them more effectively through legislation. Classification probably will take the form of dividing cities into population classes, then applying certain legislation only to one or several classes. Such classification is used now under Montana law for instances in which legislation must be tailored for the specific needs of a group of local government units.

The committee also wishes to direct the legislature to provide methods by which cities and towns, in effect, may go out of business. At present, methods for disincorporation are provided by law only for towns with less than 500 population. The committee believes disincorporation might be a workable means of ending needless duplication of governmental services on the local level.

Section 4. GENERAL POWERS. Local government units not exercising self-government powers under sections 5 and 6 shall have the following general powers:

(1) Incorporated cities and towns shall have the powers of a municipal corporation and such legislative, administrative and other powers as provided or implied by law.

(2) Counties shall have such legislative, administrative and other powers as provided or implied by law.

(3) The powers of incorporated cities and towns and counties shall be liberally construed.

(4) Other local government units shall have such powers as provided by law.

COMMENTS

The question of what powers local government units should

exercise is crucial, controversial and confusing. Involved are desires for local control of local affairs on the one hand and the need for certain uniformity and statewide standards for minimum services on the other. To deal with the problem, the Local Government Committee proposes a basic, two-level system of powers for local government units. One level, described in section 4, is a somewhat liberalized version of the powers now exercised by the local units; the other level, described in section 6, is new to Montana and provides a self-government concept for local units.

The present Montana Constitution makes no general mention of what powers units of local government have. The result is that Constitutional silence, rather than Constitutional language, has become the basis for local government authority in Montana. The Local Government Committee believes that express Constitutional wording should be included concerning the important question of the power relationship between state and local governments. Such wording is necessary to distinguish between self-government units and other units and to change the traditional power relationship between the state and its local units.

Cities and Towns

Subsection 1 of section 4 provides that incorporated cities and towns shall have the "powers of a municipal corporation and such legislative, administrative and other powers as provided or implied by law." Subsection 3 adds that the powers shall be liberally construed.

Subsection 1, to a degree, restates the present power position of Montana cities and towns--a position based largely on the "Dillon Rule" of judicial construction. The "Dillon Rule," named after a 19th century Iowa judge, provides:

> It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation,--not simply convenient, but indispersable. Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied. Of every municipal corporation the charter or statute by which it is created is its organic act. Neither the corporation nor its officers can do any act, or make any contract, or incur any liability, not authorized thereby, or by some legislative act applicable thereto. All acts beyond the scope of the powers granted are void. (John F. Dillon, Commentaries on the Law of Municipal Corporations, 5th ed., vol. 1, pp. 142-143.)

In Montana, the court repeatedly has cited the "Dillon Rule" in determining the powers of cities and towns. But it also occasionally has suggested that cities and towns have certain inherent rights, at least in narrowly limited areas of concern. Two 1935 decisions--State ex rel. City of Missoula v. Holmes and State ex rel. Kern v. Arnold--provide leading examples of the latter, suggesting that municipal corporations, when acting as private corporations, have more freedom of action.

The intent of section 4 is to encourage the court to liberally interpret the powers of incorporated cities and towns--to allow them reasonable control over local affairs or concerns without granting them a full range of self-government powers in all areas of concern. Section 4 does not attempt to upset the present established power relationship between the state and cities and towns. What it does intend to do is direct the court, when possible, to give the benefit of the doubt to the city or town. Section 4 attempts to give cities and towns more elbowroom to act.

In this regard, it should be pointed out that under this section--and, indeed, under the present Montana Constitution--the legislature could give considerably more freedom to local units than it has chosen to do. In recent sessions, the legislature has been moving toward freeing local governments; authorizing an all-purpose mill levy as a substitute for the individual levy limits on separate funds is a leading example.

Counties

Montana counties--like most of those elsewhere in the nation--are even more tightly under the legislature's thumb than are cities and towns. The Montana county presently is more administrative than governmental in nature; rules are made in Helena every other year and carried out--or administered--on the county level day-to-day.

Through stringent court interpretations (notably Plath v. Hi-Ball Contractors, Inc. in 1961 and Bacus v. Lake County in 1960), Montana counties have been denied the local legislative, or ordinance-making powers possessed by cities and towns.

It is not enough to say that Montana counties can act only when authorized to do so by the legislature. That statement may be true of Montana's cities and towns, but for the state's counties, authorization to act is not sufficient. Rather, the legislature must not only tell counties that they may act; it also must spell out in what manner they may act. Neil S. Keefer succinctly summed up the role to which Montana counties have been relegated in a 1964 article in the Montana Law Review:

> To be Constitutional, a statute granting authority to counties must be sufficiently explicit and restrictive, so that its execution requires only administrative

action and not an exercise of legislative power. (p. 137).

In the past, the court has struck down Montana planning and zoning legislation and laws authorizing county and district health boards as unconstitutional delegations of legislative powers to counties. An Idaho professor, author of perhaps the leading text on county government, describes the lack of a more extensive ordinance-making power as "an important weakness in county government" (see Herbert Sydney Duncombe, County Government in America, p. 48).

The Local Government Committee is well aware of contentions that counties should not exercise any legislative power because the traditional county structure does not allow for clear separation of the legislative and executive functions and thus does not provide for clear separation of powers. However, the committee believes the legislature can build safeguards into any grant of legislative powers to counties to guard against such alleged abuse of the separation of powers concept. The language of section 4, subsection 2 clearly hinges the grant of legislative powers to counties on grants from the legislature; no broad grant of power is given directly to counties by this section.

The committee's overriding concern is that Montana counties, through the officials elected locally, be allowed to meet the increasing challenges of a rapidly changing state. Allowing the legislature to give counties legislative power will provide another tool in coping with the urban sprawl outside incorporated municipalities and in eliminating some of the present reasons feeding the growth of overlapping governmental jurisdictions and special districts.

Other Local Units

Section 4 provides that local government units other than cities, towns and counties will have those powers provided by law. Thus, the legislature could establish special districts to provide special functions and could assign either municipal-corporation or county-type powers to a city-county consolidated government.

General Comments

In general, the intent of section 4 is to provide that units of local government not adopting self-government powers will not be crippled in meeting local needs. Thus, the powers of incorporated cities, towns and counties are to be "liberally construed" and counties may be allowed to exercise legislative powers--something the court has said they may not do under the present Constitution.

However, section 4 is not intended as a broad grant of self-government powers; such powers are provided for in section 6 only

upon an affirmative vote of the residents of a local government unit.

Section 5. SELF-GOVERNMENT CHARTERS. The legislature shall prescribe procedures and may set limits under which a local government unit or combination of units may frame, adopt, amend, revise or abandon a self-government charter with the approval of a majority of those voting on the question. The prescribed procedures, however, shall not require approval of a charter by a legislative body.

Charter provisions with respect to a local government unit's executive, legislative and administrative structure and organization shall be superior to statutory provisions.

COMMENTS

At present in Montana, only the legislature can draw up charters; local residents are only given the authority to adopt or reject the legislature's work.

Section 3 reaffirms the authorization for the legislature to continue its practice of providing alternative forms of government for local units, subject to local voter approval. section 5 adds a new feature: authorization for the people of a locality to frame and adopt their own form of government through a "self-government charter." Such local charter-writing power now is authorized in about half of the state Constitutions.

Section 5 directs the legislature to provide procedures and limitations under which local government units--or combinations of those units (for example, a county and the cities and towns within the county)--can design their own form of government. Two major safeguards are built into the plan:

(1) The legislature must set limits and procedures under which charters may be drafted. For example, the legislature might determine that only those units or combination of units with more than 10,000 population should have charter-writing authority. Or the legislature could specify the method of selection and the number of members of a local charter-drafting commission. The committee considered including such provisions within section 5, as some state Constitutions do, but rejected the idea on the basis that such provisions should have the flexibility of statutory law.

(2) No charter or charter amendment could become effective until it is approved by a majority of the local voters.

The section also <u>limits</u> the power of the legislature over locally written charters in two ways:

(1) Although it allows the legislature to set procedures and limitations concerning the drafting of a local charter, section 5 specifically denies both the state legislature and local legislative bodies (such as city councils) the power to veto a locally approved charter. The committee believes that a legislative body should not be allowed to set aside a properly drafted charter that local residents believe meets their needs.

(2) Charter provisions on a local unit's executive, legislative and administrative structure will supercede statutory provisions under the language of section 5. Thus, if a local unit decides through its local charter to elect a treasurer but state law generally requires that treasurers must be appointed, the charter provision calling for election will become effective.

Testimony before the committee indicated that no massive movement toward locally drafted charters is likely to occur in the foreseeable future. However, at least one official--the mayor of Missoula--did express considerable interest in a self-government charter. The committee believes local charter writing authority is a valuable tool for several reasons:

--It allows a locality to tailor its governmental structure to its own needs and offers an excellent method whereby more people can become directly involved in their government.

--It provides a method whereby a local government unit can bypass a recalcitrant legislature which refuses to provide optional forms of government.

Many of the states which authorize local charter writing limit the grant of authority to local units over a certain population size. The committee, however, believes that no such Constitutional limitations should be imposed; rather, it would leave such restrictions to the legislature.

> Section 6. SELF-GOVERNMENT POWERS. Local government units adopting self-government charters may exercise all powers not prohibited by this Constitution, by law or by charter.
>
> This grant of self-government powers may be extended to other local government units through optional forms of government provided for in section 3.

COMMENTS

Local government units adopting self-government charters, or adopting a special optional form of government that the legislature is empowered to authorize, will be allowed to exercise all powers not prohibited by this Constitution, by law or by charter.

In effect, section 6 grants to local units the authority to share powers with the state government--a form of what generally

has become known as "home rule." The Local Government Committee, however, has studiously avoided this term, preferring to call the grant of authority "self-government powers."

Section 6 is intended to authorize certain local units to have considerably more freedom in determining their local affairs. Under the present Montana Constitution--and under the general authority authorized in section 4 of this proposal--local units would have only those powers granted or directly implied by the legislature. The provisions of section 6, on the other hand, would reverse this situation: self-government units would be able to exercise all powers that their charters, the legislature or the Constitution did not prohibit.

This "shared powers" concept is relatively new. It is endorsed by the National Municipal League and the Advisory Commission on Intergovernmental Relations and is included in the Constitutions of at least five states--Alaska, South Dakota, Missouri, Massachusetts and Pennsylvania. It clarifies lines of responsibility. Legislative inaction no longer could block local action; instead, such inaction on the state level would serve as a go-ahead for local governments. Significantly, the "shared powers" concept does not leave the local unit free from state control; it does, however, change the basic assumption concerning the power of local government. At present, that assumption is that local government lacks power unless it has been specifically granted. Under the shared powers concept, the assumption is that local government possesses the power, unless it has been specifically denied.

The legislature, in areas such as pollution control where statewide uniformity is desirable, still could impose statewide standards under the shared powers concept. Some areas--such as the definition and punishment of felonies--undoubtedly would be retained by the legislature. But in other areas of unique concern to a local unit, it could apply flexible approaches to problems and not be bound by state inaction or disinterest.

The committee believes the "shared powers" concept embodied in section 6 is desirable because it grants considerable autonomy to those local units that wish it, yet it allows the legislature at any time to step in and prohibit the local unit from proceeding in a manner contrary to state interests. It clearly is the most flexible approach toward local self-government.

As worded in section 6, the grant of self-government powers also is surrounded by ample safeguards. Most significantly, no unit of local government will be able to exercise the increased local authority without prior approval of its residents in one of two ways:

--Approval of a locally drafted charter, which can restrict the powers of the local unit.

--Approval of a legislatively drafted charter, which also can limit the powers of the local unit.

Thus, no local government unit will be able to exercise the self-government powers without the express approval of a majority of the local voters. The legislature would retain final authority to guard against infringement of the power.

A frequent question in regard to local self-government powers concerns what authority a unit should have in the area of taxation. Under this proposal, a self-government unit could exercise all taxation power not denied it by the Constitution, by law or by its charter. Theoretically, that may sound like a dangerous grant of power, but on a practical basis, taxation probably would be the first area to be circumscribed by the legislature or by the local charter. For example, the legislature might prohibit any self-government unit to impose any tax other than property and license taxes and might limit property taxes to no more than 70 mills. The committee is not endorsing such restrictions; it simply wishes to point out that from a practical standpoint, both the legislature and the local voters undoubtedly will impose taxation limitations on a self-government unit.

> Section 7. INTERGOVERNMENTAL COOPERATION. A local government unit by act of its governing body, may, or, upon being required by initiative or referendum, shall cooperate, consolidate or agree in the exercise of any function, power or responsibility with, or share the service of an officer, or transfer or delegate any function, power or responsibility or duties of an officer to one or more other local government units, school districts, the state or the United States, unless prohibited by law or charter.

COMMENTS

Section 7 is intended to be a complete grant of authority to all local government units to cooperate in the exercise of powers and functions, share the services of officers and transfer functions and responsibilities to other units of government. Such functional cooperation and consolidation is increasingly demanded by the rising costs of governmental services and the careless duplication of governmental services.

Broad grants of power to cooperate already are provided under Montana law, but the committee believes that Constitutional language should be added giving broad latitude to local units in cooperative ventures. Section 7 has several features:

--It specifically authorizes local residents, through the initiative, to force their local governments to cooperate and to stop senseless duplication of services.

--It allows the legislature or, in case of locally drafted

charters, the voters to directly prohibit certain forms of cooperation.

The committee believes that maximum activity by local government units under section 7 could solve many of the problems of inefficiency and duplication of services now plaguing some areas in Montana.

> Section 8. REVENUE SHARING. Nothing in this Constitution shall prohibit the state from sharing revenue with local government units or the units from participating in revenue sharing with the state or the United States.

COMMENTS

Article XII, section 4 of the present Montana Constitution has been interpreted as limiting the state aid that can be provided for local governments. The result has been a tightening of the local fiscal squeeze, increased reliance on the property tax, subterfuge to "get around" the Constitutional limitation and the fact that Montana ranks 46th in the nation in state per capita aid to city and county governments.

At the time of adoption of this majority proposal by the committee, it appears that Article XII, section 4 will be deleted from the new Constitution. However, the committee believes it is highly desirable to affirmatively provide that the state may share revenue with the local units and that the local units may participate in revenue sharing with the state and the United States. Such a provision will not assure such state or federal assistance; it only will assure that the Constitution will not stand in the way of statutory provisions for such aid.

> Section 9. INITIATIVE AND REFERENDUM. The initiative and referendum powers reserved to the people by the Constitution shall be extended by law to the qualified voters of each local government unit.

COMMENTS

The committee believes it is essential that local residents have the powers of initiative and referendum, particularly in view of the broad self-government powers offered in this proposal. The committee also believes that the proper place to assure these "people powers" is in the local government article. Specific provisions concerning petition requirements, however, should be left to statutory law where they can be easily reached if change is needed.

> Section 10. RECALL. All elected public officials of local government units are subject to recall by the voters of the unit from which elected. Procedures for recall shall be prescribed by law.

COMMENTS

The people should have the right to remove public officials on the local level, for much the same reasons as cited in the comments to section 9. Once again, the committee favors leaving recall procedures to statutory law, although concern was expressed that the requirements should be of sufficient severity to eliminate frivolous and repeated recall elections.

Section 11. VOTER REVIEW OF LOCAL GOVERNMENT. The legislature shall within four years of the adoption of this Constitution provide for procedures by which each local government unit either separately or jointly shall review the government structure of the local unit or joint unit and shall submit one alternative form of government to the voters at the next general or special election. The legislature shall provide for a review procedure each ten years after the first election.

COMMENTS

Section 11 represents perhaps the most unique feature of the local government proposal. It requires that the legislature, within four years after the adoption of the Constitution, must provide methods by which each local unit, singly or in combination with another or others, must study its governmental structure. The key provision is that residents of each unit must have an opportunity to vote on whether to adopt an alternative form or retain their present form.

Although the procedures are left up to the legislature, the committee envisions that local commissions might be created to draft an entirely new type of government or simply take an alternative form authorized by the legislature and recommend that it be put on the ballot locally. Different counties and different cities could vote on different alternatives; some counties and cities might want to submit consolidated city-county forms for judgment by the voters.

The committee strongly believes that such local review of government is highly desirable. Costs would be minimum and more than repaid if local governments can be improved. Increased voter interest and awareness of local government issues would be assured, and some local units, through experimentation, might find answers to local government problems that would aid other units in the state.

An overriding consideration is that the local voters would be the final judges of whether the alternative proposed really would be a better form of government than that in effect at the time of the election. Even if every county, city and town decides to retain its existing form of government following the review procedure, the committee believes the time spent in study and

discussion of local government will result indirectly in more responsive and responsible local government.

Section 11 directs the legislature to provide for a "review procedure" each ten years after the first election. Such decennial review would not necessarily have to require that each unit in the state go through the complete review process required the first time.

APPENDIX A

CROSS REFERENCES

PROPOSED SECTION	PRESENT ARTICLE & SECTION
1	none
2	XVI, 1, 2, 8
3	XVI, 4, 5, 6, 7
4	none
5	none
6	none
7	none
8	none
9	none
10	none
11	none
Not Replaced	XVI, 3; XIX, 6

APPENDIX B

PROPOSALS CONSIDERED BY COMMITTEE

The following delegate proposals were examined and considered by the Local Government Committee during its deliberations:

	Number of Proposal	Chief Sponsor	Subject Matter	Disposition
1.	5	Katie Payne	Repeal Article XVI, Section 5	Rejected
2.	6	Katie Payne	Local Charters	Intent Adopted in Part
3.	9	Franklin Priess	District Plan	Rejected
4.	17	Arnold Jacobsen	Districting for Boards of County Commissioners	Rejected
5.	23	Virginia Blend	Welfare Funding	Handled by Revenue & Finance Public Health, Welfare, Labor & Industry Committees
6.	54	George Collins	Repeal Article XIX, Section 6	Adopted
7.	56	Marian Erdmann	New Article on Local Government	Intent Adopted in Part
8.	60	Rod Hanson	Prohibit Consolidating Counties Without Vote of People	Intent Adopted in Part
9.	79	C. B. McNeil	Distribution of Governmental Powers in Subdivisions	Rejected

10.	89	Oscar Anderson	Article XVI, County Boundaries and County Seats	Adopted
11.	97	Thomas Ask	New Article on Local Government	Adopted
12.	99	Robert Kelleher	City Manager	Rejected
13.	108	Dorothy Eck	Elections on Alternate Forms of Government	Intent Adopted in Part
14.	110	Geoffrey Frazier	Limit Terms of Officers	Rejected
15.	122	Thomas Ask	Delete Prohibition on Salary Increases	Handled by Legislative Committee
16.	126	Lucile Speer	New Article on Local Government	Intent Adopted in Part
17.	134	Franklin Arness	Repeal Article XII, Sections 15 & 16; and Amend Article XII, Section 17	Handled by Revenue & Finance Committee
18.	156	J. Mason Melvin	Election of Sheriffs	Intent Adopted in Part
19.	166	Katie Payne	Legislative Powers for Certain Counties	Intent Adopted in Part

APPENDIX C

WITNESSES HEARD BY COMMITTEE

Name - Affiliation - Residence - Subject

1. Howard Hammer - Ravalli County Commissioner - Hamilton - Provisions on counties.
2. Earl Daley - Valley County Commissioner - Nashua - Provisions on counties.
3. Dale Skaalure - Hill County Commissioner - Big Sandy - Provisions on counties.
4. Burt Hurwitz - Meagher County Commissioner - White Sulphur Springs - Provisions on counties.
5. Ralph Armstrong - Gallatin County Commissioner - Belgrade - Provisions on counties.
6. Don Gibson - Dawson County Commissioner - Glendive Provisions on counties.
7. Milo Dean - Cascade County Commissioner - Great Falls - Provisions on counties.
8. Dean Zinnecker - Montana Association of County Commissioners - Helena - Provisions on counties.
9. Gene Nordberg - Citizen - Sidney - General local government.
10. Walter Anderson - City Manager - Helena - General local government.
11. Dan Mizner - Montana League of Cities and Towns - Helena - General local government.
12. Tom Phillips - Montana League of Cities and Towns - Helena - General local government.
13. George Schroeder - County Treasurers Association - Great Falls - Matters relating to county treasurers.
14. Mary E. Westermark - County Treasurers Association - Shelby - Matters relating to county treasurers.
15. Earl J. Holman - Silver Bow County Commissioner - Butte - Legalizing gambling.

16. Jean Anderson - League of Women Voters - Billings - General local government.

17. Robert Berrig - Lincoln County Superintendent of Schools - Libby - Keeping County Superintendents of Schools in Constitution.

18. Opal Eggert - Elected County Officials Association - Helena - Keeping county officials in Constitution.

19. Margaret Brown - Gallatin County Superintendent of Schools - Bozeman - Keeping County Superinterderts of Schools in Constitution.

20. Harry L. Axtmann - Roosevelt County Superintendent of Schools - Wolf Point - Keeping county officials in Constitution.

21. Fred Barclay - Missoula County Assessor - Missoula - Qualifications and pay of assessors.

22. J. J. Schmidt - Clerk and Recorders Association - Great Falls - Suggestions concerning absentee ballots.

23. William Cassella, Jr. - Executive Director, National Municipal League - New York - General local government.

24. H. J. Pierce - Citizen - Great Falls - Inefficiency in local government.

25. Dr. Thomas Payne - Professor, University of Montana - Missoula - Local government in general.

26. J. Mason Melvin - Delegate - Bozeman - Elected sheriffs.

27. George Turman - Mayor - Missoula - Suggestions for local government article.

28. Jean Ellison - Meagher County Superintendent of Schools - White Sulphur Springs - Electing County Superintendents of Schools.

29. Roy Crosby - Citizens for Constitutional Government - Helena - Suggestions for Local Government Article.

30. James Moore - Law Student - Missoula - Local Government Article.

31. Robert D. Watt - Montana Student Presidents Association, Retired County Superintendent of Schools & Legislator - Missoula - Keeping County Superintendents of Schools in Constitution.

32. Grace Hanson - Flathead County Superintendent of Schools -

Kalispell - Keeping County Superintendents of Schools in Constitution.

33. Dorothy Simmons - Lewis & Clark County Superintendent of Schools - Helena - Keeping County Superintendent of Schools in Constitution.

34. Carolyn Brojen - Missoula County Superintendent of Schools - Missoula - Keeping County Superintendents of Schools in Constitution.

35. Lloyd Markel - Montana Education Association - Helena - Keeping County Superintendents of Schools in Constitution.

36. Delores Colberg - State Superintendent of Schools - Helena - Regarding County Superintendents of Schools.

37. Dorothy Eck - Vice Chairman of Convention - Bozeman - Delegate Proposal 108.

38. Rod Hanson - Delegate - Fairfield - Delegate Proposal 60.

39. James Felt - Delegate - Billings - Delegate Proposal 40.

40. William Wheeler - Flathead County Surveyor - Kalispell Keeping surveyors elected.

41. C. P. McNeil - Delegate - Polson - Delegate Proposal 79.

42. P. J. Goodheart - State Senator - Malta - General local government.

43. P. J. Keenan - State Senator - Anaconda - General local government.

44. Gordon McOmber - State Senator - Fairfield - General local government.

45. Henry S. Cox - Representative - Billings, General local government.

46. William Campbell - Representative - Missoula - General local government.

47. Harold McGrath - Representative - Butte - General local government.

48. Mario Micone - Mayor - Butte - General local government.

49. John Ray - Citizen - Hamilton - Power to local government and optional plans.

50. John Hauser - Citizen - Stevensville - Power to local government and optional plans.

51. Dave Drum - Delegate - Billings - General local government.

52. Mrs. Roberta West - Citizen - Chinook - General local government.

53. Robert Mitchell - Chairman, Missoula Interlocal Cooperation Commission - Missoula - General local government.

54. Laurence Bjornsby - Mayor - Kalispell - General local government.

55. Mrs. Fern Hart - League of Women Voters - Missoula - General local government.

56. John McLaughlin - Mayor - Great Falls - General local government.

57. Mary C. Holt - Citizen - Augusta - General local government.

APPENDIX D

ROLL CALLS ON MAJORITY PROPOSAL

MEMBER	SECTION	1	2	3	4	5	6	7	8	9	10	11	TOTAL Y	TOTAL N	TOTAL A	Pass
Anderson		Y	Y	Y	Y	Y	P	Y	Y	Y	N	Y	9	1		1
Blend		N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	10	1		
Arness		Y	Y	Y	Y	N	N	Y	Y	Y	Y	Y	9	2		
Ask		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	11			
Erdmann		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	11			
Jacobsen		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	11			
Payne		A	A	A	P	P	P	Y	Y	Y	N	P	3	1	3	4
Rollins		Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	10	1		
Simon		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	11			
Sparks		A	A	A	A	A	A	A	A	A	A	A			11	
Speer		Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	10	1		
TOTAL	Yea	8	9	9	9	8	7	10	10	10	6	9				
	Nay	1				1	1				4					
	Absent	2	2	2	1	1	1	1	1	1	1	1				
	Pass				1	1	2					1				

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

GENERAL GOVERNMENT

AND CONSTITUTIONAL AMENDMENT COMMITTEE PROPOSAL

ON GENERAL GOVERNMENT

No. XII

Date Introduced: February 19, 1972

/s/ Mark Etchart, Chairman

/s/ Paul K. Harlow, Vice Chairman

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ROLL CALL VOTES 835

Date: February 19, 1972

To: MONTANA CONSTITUTIONAL CONVENTION

From: General Government and Constitutional Amendment Committee

Ladies and Gentlemen:

The General Government and Constitutional Amendment Committee submits herewith a proposed new General Government Article. The proposed Article is intended to replace all sections of the present Constitution dealing with general government areas.

The scope of an area such as general government is broad and, unless specific issues are cited, somewhat nebulous. The proposed Article does not have an exact duplicate in the Constitution of 1889. The content of the new Article was drawn from many sections of the old Constitution (See Appendix A) and from delegate proposals assigned to the committee (see Appendix B). The topics are varied and encompass many areas of state government. Though some members of the committee disagreed on various portions of the proposed Article, the committee agreed unanimously on the basic intent of the article. In signing this majority report a Committee member does not necessarily endorse each and every statement in it. Those members who disagree on specific sections signed minority reports outlining their dissent.

The committee utilized the services of the following people in addition to its members: James Grady (Research Analyst), Bobbie Murphy (Secretary) and Robert Skaggs (Intern).

/s/ Mark Etchart
Chairman

/s/ Paul K. Harlow
Vice Chairman

MAJORITY PROPOSAL

BE IT PROPOSED BY THE GENERAL GOVERNMENT AND CONSTITUTIONAL AMENDMENT COMMITTEE:

That there be a new Article on General Government to read as follows:

ARTICLE ___

GENERAL GOVERNMENT

Section 1. SEPARATION OF POWERS. The powers of the government of this state are divided into three distinct departments: The legislative, executive, and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this Constitution expressly directed or permitted.

Section 2. CONTINUITY OF GOVERNMENT. The seat of government shall be in Helena, except during periods of emergency resulting from disasters or enemy attack. The legislative assembly may enact laws to insure the continuity of governmental operations during a period of emergency. Such laws may deviate from other provisions of the Montana Constitution conflicting therewith but shall be effective only during the period of emergency that affects a particular office or governmental operation.

Section 3. OATH OF OFFICE. Members of the legislative assembly and all officers, executive, ministerial or judicial, shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation, to-wit: "I do solemnly swear (or affirm) that I will support, protect and defend the Constitution of the United States, and the Constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God)." And no other oath, declaration or test shall be required as a qualification for any office or public trust.

Section 4. INITIATIVE. The people may enact laws by initiative on all matters except appropriations of money and local or special laws prohibited by this Constitution. Initiative petitions must be signed by eight percent or more of the legal voters in each of one-third or more of the legislative representative districts and the total number of signers must be eight percent or more of the total legal voters of the state. Each petition must contain the full text of the proposed measure. Petitions must be filed with the Secretary of State four months or more prior to the election at which they will be voted upon. The

enacting clause of all initiative measures shall be: "Be it enacted by the people of the State of Montana."

Section 5. REFERENDUM. (1) The people may approve or reject acts of the legislature by referendum, except appropriations of money. A referendum may be ordered by the legislative assembly, or upon petition signed by eight percent or more of the legal voters in each of one-third or more of the legislative representative districts and the total number of signers must be eight percent or more of the total legal voters of the state. Referendum petitions must be filed with the Secretary of State no later than six months after adjournment of the legislative assembly which passed the bill.

(2) Acts of the legislature referred to the people are in full force and effect unless suspended by petitions signed by 15 percent of the legal voters of a majority of the whole number of the legislative representative districts of the state, in which case the law shall be inoperative until such time as it shall be passed upon at an election, and the result has been determined and declared as provided by law.

Section 6. ELECTIONS. All measures referred to the people shall be voted upon at the regular biennial election unless a special election is ordered by the legislative assembly.

Section 7. LEGAL VOTERS. The number of legal voters for each legislative representative district and for the state is determined by the votes cast for the office of Governor in the regular election immediately preceding filing of petitions for initiative or referendum measures.

Section 8. GUBERNATORIAL VETO. The governor does not have power to veto initiative or referendum measures.

Section 9. RESTRICTION. This article is not applicable to Constitutional revision as covered in Article ___ of this Constitution.

Section 10. RECALL. Laws shall be enacted to provide for the recall of all elected officials of the state and of its political subdivisions upon petition of electors equal in number to 25 percent of the number of persons voting in the last preceding election for the office of Governor in the state or political subdivision of the official sought to be recalled.

Section 11. GAMBLING. All forms of gambling, lotteries, and gift enterprises are prohibited unless authorized by acts of the legislature or by the people through initiative or referendum.

/s/ Mark Etchart
Chairman

/s/ Paul K. Harlow
Vice Chairman

/s/ Don F. Belcher /s/ Bruce M. Brown /s/ Lyman W. Choate

/s/ Otto T. Kalebaugh /s/ Robert Vermillion /s/ Peter "Pete" Iorello

COMMENTS ON MAJORITY PROPOSAL

Section 1. SEPARATION OF POWERS. The powers of the government of this state are divided into three distinct departments: The legislative, executive, and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this Constitution expressly directed or permitted.

COMMENTS

This section with the exception of the title change from "Distribution" to "Separation" is identical to Article IV of the present Constitution. The committee feels a statement dividing the powers of government among the three branches of state government is essential to any Constitution. The present article has been the crucial factor in determining much litigation, and is an invaluable tool for the courts in deciding matters of governmental jurisdiction. A statement dividing the powers of government is designed to act as a check on an overly ambitious branch of government.

The committee carefully considered Delegate Proposal 79 which would have extended the separation of powers doctrine to all political subdivisions of the state. The committee rejected this proposal, as it feels such a Constitutional provision would create far-reaching, unwieldly problems. The separation of powers by a Constitution necessitates that the governmental powers, since separated, be distributed among several branches of government. If such a separation-distribution were mandatorially extended to the state (which now operates under the doctrine) and all its political subdivisions (some of which do not operate under the doctrine), chaos could result under present Montana government. The extension would require that every political subdivision, every governmental level, have its powers separated and distributed. Thus, school boards would cease to function as they now do. School boards now both legislate school regulations and hear appeals on the results of their rules, both legislative and judicial functions. Under Delegate Proposal 79, at least two separate boards would have to be created: one to hear appeals and one to make the rules, as both functions could not be performed by the same board. The committee feels the additional burdens and expense Delegate Proposal 79 would incur offset any benefits of the proposal.

Section 2. CONTINUITY OF GOVERNMENT. The seat of government shall be in Helena, except during periods of emergency resulting from disasters or enemy attack. The legislative assembly may enact laws to insure the continuity of governmental operations during a period of emergency. Such laws may deviate from other provisions of the Montana Constitution conflicting therewith but

shall be effective only during the period of emergency that affects a particular office or governmental operation.

COMMENTS

This section would revise the provisions in Article X, sections 2, 3 and 4 of the present Constitution relating to the seat of government and Article V, section 46 relating to continuity of government. The proposed section is sufficient to allow the legislature to enact laws to provide for continuity of government under any situation that may arise.

Section 3. OATH OF OFFICE. Members of the legislative assembly and all officers, executive, ministerial or judicial, shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or arfirmation, to-wit: "I do solemnly swear (or affirm) that I will support, protect and defend the Constitution of the United States, and the Constitution of the state or Montana, and that I will discharge the duties of my office with fidelity (so help me God)." And no other oath, declaration or test shall be required as a qualification for any office or public trust.

COMMENTS

This oath is a shortened version of the oath presently contained in Article XIX, section 1 of the present Constitution. This oath contains the intent of the present Constitution's oath, but without the extensive detail. The proposed oath also allows a person of any religious persuasion, including an atheist or agnostic, to take the oath without violating his principles. The provision also prohibits any other oath as a qualification for any state public office.

Section 4. INITIATIVE. The people may enact laws by initiative on all matters except appropriations of money and local or special laws prohibited by this Constitution. Initiative petitions must be signed by eight percent (8%) or more of the legal voters in each of 1/3 or more of the legislative representative districts and the total number of signers must be eight percent (8%) or more of the total legal voters of the state. Each petition must contain the full text of the proposed measure. Petitions must be filed with the Secretary of State four months or more prior to the election at which they will be voted upon. The enacting clause of all initiative measures shall be: "Be it enacted by the people of the state of Montana."

COMMENTS

This is the provision for statutory initiative agreed on by the General Government and Legislative Committees. The General Government Committee feels the petition requirements of eight percent (8%) in each of 1/3 or more of the legislative representative districts and eight percent (8%) or more of the total legal voters of the state are high enough to prevent frivolous legislative efforts by a small minority, yet low enough to allow serious, popular measures to be initiated by the people.

> Section 5. REFERENDUM. (1) The people may approve or reject acts of the legislature by referendum, except appropriations of money. A referendum may be ordered by the legislative assembly, or upon petition signed by eight percent (8%) or more of the legal voters in each of 1/3 or more of the legislative representative districts and the total number of signers must be eight percent (8%) or more of the total legal voters of the state. Referendum petitions must be filed with the Secretary of State no later than six months after adjournment of the legislative assembly which passed the bill.
>
> (2) Acts of the legislature referred to the people are in full force and effect unless suspended by petitions signed by fifteen percent (15%) of the legal voters of a majority of the whole number of the legislative representative districts of the state, in which case the law shall be inoperative until such time as it shall be passed upon at an election, and the result has been determined and declared as provided by law.

COMMENTS

This section contains the procedure for the two forms of statutory referendum as agreed upon by the General Government and Legislative Committees. This provision is parallel to the present referendum provisions as contained in Article V, section 1 of the Constitution. The only changes are the petition requirements, which the General Government Committee felt should be set at eight percent (8%) of the legal voters in each of 1/3 or more of the legislative representative districts and eight percent (8%) or more of the total legal voters of the state for the petition referendum. The committee set the petition requirement for requiring suspension of enforcement of a matter to be referred at fifteen percent (15%) of the whole number of legal voters of a majority of the legislative representative districts of the state. This provision is analogous to present Constitutional provision.

> Section 6. ELECTIONS. All measures referred to the people shall be voted upon at the regular biennial election unless a special election is ordered by the legislative assembly.

Section 7. LEGAL VOTERS. The number of legal voters for each legislative representative district and for the state is determined by the votes cast for the office of governor in the regular election immediately preceding filing of petitions for initiative or referendum measures.

COMMENTS

These sections are administrative in nature and fairly self-explanatory. The committee feels such measures should be stated in the same place as the subject matter they cover.

Section 8. GUBERNATORIAL VETO. The governor does not have power to veto initiative or referendum measures.

COMMENTS

This section prohibits the governor from vetoing an initiative or referendum. The present Constitution also contains such a provision. The committee feels one man should not have the power to overturn a decision made by a majority of the state's electorate.

Section 9. RESTRICTION. This article is not applicable to Constitutional revision as covered in Article ___ of this Constitution.

COMMENTS

This section is included to prevent any confusion with the initiative and referendum provisions on Constitutional revision that are otherwise created in the Constitution.

Section 10. RECALL. Laws shall be enacted to provide for the recall of all elected officials of the state and of its political subdivisions upon petition of electors equal in number to twenty-five percent (25%) of the number of persons voting in the last preceding election for the office of governor in the state or political subdivision of the official sought to be recalled.

COMMENTS

Section 10 provides for the recall of public officers. The committee feels this is a basic right of the people under a form of government such as Montana's. The recall is designed to keep politicians "honest" in the political sense. Impeachment provisions are designed to keep politicians honest in the legal sense. In other words, recall is not designed for cases of malfeasance. Recall is designed to allow the public to remove an elected official who is making political decisions with which the majority of the people disagree. It is designed to help insure a politician

will live up to his promises once elected. Recall gives the people remedy to a situation that they feel must be rectified before the next election day.

The requirement of twenty-five percent (25%) of the number of electors in the concerned political subdivision creates a workable and desirable system. The petition requirement is very steep. Frivolous attempts to call a recall election or the use of the recall as blackmail by a small minority are extremely doubtful and both instances represent hypothetical situations of dubious foundation.

The recall sponsors would be hard pressed to convince twenty-five percent (25%) of the concerned individuals that the deeds of the official were nefarious enough to warrant the cost of a recall election. On the other hand, should genuine grievances exist, the petition requirement is not so high that a recall election is unattainable.

Section 11. GAMBLING. All forms of gambling, lotteries, and gift enterprises are prohibited unless authorized by acts of the legislature or by the people through initiative or referendum.

COMMENTS

This section is designed to replace Article XIX, section 2 of the present Constitution. The present Constitution prohibits gambling of any kind. The proposed revision would continue this prohibition until the legislature specifically legalizes particular forms. The proposed revision would alleviate a good deal of fear among the populace that a Constitutional change would open the door to all sorts of gambling problems that do not now exist in the state. The committee revised the specific and inflexible prohibition because it feels the legislature should make the rules governing gambling.

The committee recommends that if at all possible, the convention decision on lotteries and gambling be presented to the voters as a separate issue.

MINORITY PROPOSAL 1

BE IT PROPOSED:

That there be a new Constitutional section as follows:

Section ___ BOUNDARIES. The sovereignty and jurisdiction of the state of Montana shall prevail within the area encompassed by the following boundaries:

Beginning at the point of intersection of the 104th meridian of west longitude and the 45th parallel of north latitude, thence clockwise west on said parallel to its intersection with the 111th meridian; south on said meridian to the crest of the Rocky Mountains; northwestward on said crest (the continental divide) to the summit of Lost Trail Pass intersecting there with the southeast end and crest of the Bitterroot Mountains; hence northwestward on the crest of the Bitterroot Mountains and Range to 116th meridian; north on said meridian to the 49th parallel; east on said parallel to the 104th meridian; and south on said meridian to the place of beginning.

/s/ Don E. Belcher /s/ Paul K. Harlow

COMMENTS

The wording for this minority report is taken from the work of Walter Stamm, Dillon, Montana. The minority feels the Constitution should state the exact area over which the document establishes jurisdiction.

MINORITY PROPOSAL 2

BE IT PROPOSED:

That section 13 of the proposed General Government Article dealing with recall be deleted and no comparable section be included in the Constitution. The section to be deleted reads as follows:

> Section 13. RECALL. Laws shall be enacted to provide for the recall of all elected officials of the state and of its political subdivisions upon petition of electors equal in number to 25 percent of the number of persons voting in the last preceding election for the office of governor in the state or political subdivision of the official sought to be recalled.

/s/ Mark Etchart /s/ Bruce M. Brown

COMMENTS

A recall provision is an unnecessary and dangerous harassment provision that would hinder an elected official in performance of his duties. Such a provision would tend to disrupt the body politic, and keep Montana in a state of permanent flux. The intent of recall is also basically covered under the present electoral system, as elected officials are subject to recall each time their office is up for election.

MINORITY PROPOSAL 3

BE IT PROPOSED:

That section 11 of the proposed General Government Article dealing with gambling and lotteries be deleted, and no comparable section be included in the Constitution. The section to be deleted reads as follows:

> Section 11. GAMBLING. All forms of gambling, lotteries, and gift enterprises are prohibited unless authorized by acts of the legislature or by the people through initiative or referendum.

/s/ Lyman W. Choate /s/ Paul K. Harlow

COMMENTS

The Minority Proposal and the Majority Proposal would accomplish the same end with regards to gambling. Both would leave the matter to statutory law, where extensive provisions prohibiting gambling already exist. Neither provision would legalize gambling of any nature. However, the Majority Proposal Constitutionally states that situation. The Minority feels that to state something is illegal unless made legal is superfluous and redundant. If, as is the case, there are laws on the books, the laws will stay in force unless overturned by the court, prohibited by the Constitution, or changed by the legislature. Discussion of any court action is speculative and neither proposal prohibits the legislature from acting on the present statutory laws. The minority does not feel it is necessary to list a specific instance in which the legislature or people may act when they have been given the general power to so do. Basically, the Majority Proposal is identical to the Minority Proposal.

The minority feels the majority provision also could be somewhat confusing to the voters, whereas no mention of gambling would save the confusion resulting from the redundant majority article.

The minority would also like to point out that if the Majority Proposal is adopted, gambling would join treason as a Constitutional crime, while such crimes as murder, rape and assault are statutory crimes. In this light, the minority wonders if gambling is really a basic and Constitutional issue.

APPENDIX A

CROSS REFERENCES

PROPOSED SECTION	PRESENT ARTICLE AND SECTION
1	IV
2	X, 2-4 and 46 revised
3	XIX, 1 revised
4	V, 1 revised
5	V, 1 revised
6	V, 1 revised
7	V, 1
8	V, 1
9	V, 1 revised
10	none
11	XIX, 2 revised
none	I

APPENDIX B

DELEGATE PROPOSALS CONSIDERED BY COMMITTEE

The committee examined many delegate proposals. The following list of those proposals is sectionalized by general areas as well as by individual proposal.

Number of proposal	Chief Sponsor	Content and Disposition
		INITIATIVE, REFERENDUM AND RECALL
1. 8	Fred Martin	This provision provides for recall of public officials, and is revised and covered in the proposed article.
2. 42	Virginia Blend	This proposal provides for initiative, referendum and recall on a local level, and is revised and covered in the proposed article.
3. 129	Paul Harlow	This proposal contains the provisions for initiative, referendum and recall, and was the core proposal that resulted in the proposed article.
		BOUNDARIES
4. 26	Bruce Brown	This proposal contains an abbreviated description of the boundaries of the state. It was rejected in favor of the majority and minority boundary proposals.
5. 84	Bruce Brown	This proposal calling for complete deletion of any mention of the state boundaries has been adopted as the majority report.
		LOTTERIES AND GAMBLING
6. 24	Lyman Choate	This proposal called for no mention of lotteries or gambling of any sort in the Constitution. This proposal was adopted as a minority report.
7. 28	Don Belcher	This proposal provided that all forms of gambling would remain illegal until acted upon by the legislature. This proposal was revised and incorporated as the majority proposal.
8. 111	Gene Harbaugh	This proposal would prohibit gambling as

a means of raising revenue for the state, and would allow nonprofit organizations to engage in gift enterprises. This proposal was rejected by the committee.

9. 123 A.W. Kamhoot This proposal would have allowed nonprofit organizations to sponsor bingo. As such, it was rejected by the committee.

OATH

10. 31 Paul Harlow This proposal established a short oath for office, and was adopted as the majority proposal.

CONTINUITY OF GOVERNMENT

11. 36 Don Belcher This proposal established the seat of government in Helena and served as the core proposal for the majority report on continuity of government.

INTEREST RATES

12. 64 Jerome Cate This proposal set a limit of twelve percent (12%) of all interest charges in the state. The committee feels such a provision is not a Constitutional matter, and consequently rejected the proposal. The committee recommends this proposal be studied by the Legislative Council.

STATE AND THE LIQUOR BUSINESS

13. 112 Arnold Jacobsen This proposal would have prohibited the state from engaging in the liquor business after 1974. The committee rejected this proposal. There is no mention of the state's involvement in the liquor business in the present Constitution, and the involvement was the result of legislation. Consequently, the committee feels this proposal is legislative in nature, and if the intent of the proposal should be carried out, it should be done through the legislature. The committee recommends this proposal be referred to the Legislative Council.

14. 157 Torrey Johnson This proposal is similar to Delegate Proposal 112, but it goes beyond 112 in that it prohibits the state from "monopolize(ing) what would otherwise be a competitive business." The committee rejected

this proposal for the same reasons it rejected 112, and also because of the monopoly provision. The committee is extremely leary of freezing such a provision into the Constitution, and feels the ramifications of such a move cannot be predicted and are extremely difficult to speculate on with the brief amount of time that the committee and the convertion have.

TRANSITION

15. 115 Daphne Bugbee This proposal would have prohibited any changes dealing with elective offices called for in the proposed Constitution from taking effect until 1977. The committee feels this decision should be made by the concerned committees in consultation with the committee on Style and Drafting. Consequently, this committee rejected the proposal.

STATE INSTITUTIONS

16. 139 Mike McKeon This proposal would have Constitutionally established the location of all state institutions at their present site. The committee rejected this proposal, as it dangerously ignores the possibility of changing conditions. Such a proposal would block reconstruction and necessary relocation of the state prison at Deer Lodge should the buildings and the general area be rendered unsuitable by an earthquake.

OMBUDSMAN OR PEOPLE'S ADVOCATE

17. 172 Richard Champoux This proposal called for the creation of the office of Ombudsman in Montana. The committee noted that the Legislative Committee has recommended the creation of such an office in its report. The committee also noted that the Constitution does not now prohibit the creation of such an office. The committee feels if the office of Ombudsman (People's Advocate) is a Constitutional matter, then the Legislative Committee's proposal is adequate to put this section before the convention. Consequently, the committee rejected Delegate Proposal 172.

REAPPORTIONMENT COMMISSION

18.	62	Katie Payne	This proposal called for the creation of a reapportionment commission. The committee feels this matter was provided for by the Legislative Committee, and consequently took no specific action on the proposal.

APPENDIX C

WITNESSES HEARD BY COMMITTEE

Name - Affiliation - Residence - Subject

1. Ray Cooley - Citizen - Joplin - Ombudsman
2. Kurk Kruden - Citizen - Joplin - Ombudsman
3. Kayle Jackson - Intern - Bozeman - Ombudsman
4. John Hauser - Citizen - Stevensville - Initiative, Referendum and Recall
5. Duane Welker - Citizen - Hamilton - Initiative, Referendum and Recall
6. Frank Freeburg - Montana Music Co., Montana Coin Machine Operators - Great Falls - Gambling
7. Walter Stamm - Citizen - Dillon - Boundaries
8. Frances Satterthwaite - Inter-Tribal Policy Board - Helena - General State-Indian Relationships
9. Earl Hollman - Citizen - Butte - Gambling
10. Bob Durkee - Montana Taverns' Association - Helena - Gambling
11. Gerald I. McCurdy - NHF Montana Branch - Hamilton - Initiative, Referendum and Recall
12. Roy G. Crosby, Jr. - Citizens for Constitutional Government Missoula - Initiative, Referendum and Recall
13. Joe Shea - Administrator of Liquor Board - Helena - State and Liquor Business
14. Don Larson - Jorgenson's - Helena - State and Liquor Business
15. D. H. Sievert - Montana Chamber of Commerce - Helena - State and Liquor Business
16. C. E. Grimes - OEO - Helena - Ombudsman
17. Steve Coldiron - Low Income - Helena - Ombudsman
18. Wesley Wertz - Montana Bankers Association - Great Falls - Interest Rates

19. Robert J. Emmers - Citizen - Great Falls - Interest Rates

20. Lyle Olson - Commerce Bank - Helena - Interest Rates

21. Socs Vrates - Montana Retailers - Helena - Interest Rates

22. Joe Irwin - Montana Consumers' Finance Asscciation - Great Falls - Interest Rates

23. Irving Nyquist - Nyquist Financial Services - Great Falls - Interest Rates

24. Morris Nyquist - Nyquist Firancial Services - Great Falls - Interest Rates

25. I. W. Alke - Department of Business Regulation - Helena - Interest Rates

26. Bill Koener - Citizen - Hamilton - Initiative Referendum and Recall

27. Scott Stratton - First National Bank - Great Falls - Interest Rates

The following is a list of witnesses (with as much identification as was possible) heard during the committee's radic broadcasted hearing on gambling and lotteries. The list is at times incomplete and may not be completely accurate due to technical difficulties encountered during the hearing.

Witness - Address

28. Bill Fisher

29. Everett Seller

30. Mr. Grunds - Miles City

31. Bernard Geier

32. Fred Levitt - Eczeman

33. Stella Lilabitts - Great Falls

34. Mr. Jackson - Libby

35. Mrs. Jacoby - Great Falls

36. Mr. Platien - Whitefish

37. Mr. Clark - Livingston

38. The Mint - Sunburst

39. Mr. Wilson - Glasgow

40. Bob Crare - Helena

41. Ken Christian - Columbus

42. Mr. Crarover - Libby

43. Margaret Mayer - Helena

44. Mrs. Matthews - Helena

45. Jess - Great Falls

46. Harold Brown - Fort Peck

47. Mr. Harlan - Great Falls

48. Lee Neigh - Missoula

49. Jim Gentry - Missoula

50. Robert Sier - Glendive

51. Iva Holiday - Glasgow

52. John Leonards - Great Falls

53. Cary Lacers - Lillor

54. Lee Wilson - Conrad

55. Mrs. Haubrick - Helena

56. Necmi Sader - Bozeman

57. Al Meyer

58. Betty Bogansen - Anaconda

59. Wayne Richardson - Anaconda

60. Les - Missoula

61. Alvin Grant - Miles City

62. Paul Grating - Whitefish

63. Floyd Perriel - Great Falls

64. Shirley Balance - Lewistown

65. Jim Puttnam - Libby

66. Bob Burns - Shelby

67. Mr. Kennerman - Great Falls

68. Max Neilson - Shelby

Note: This list does not contain delegates who spoke on their proposals

ROLL CALL VOTE --- GENERAL GOVERNMENT AND CONSTITUTIONAL AMENDMENT COMMITTEE

	Sect. ____ (Boundaries)	Sect. 10 (Recall)	Sect. 11 (Gambling)	Del. Prop. 172 (Ombudsman)
Etchart	Y	N	Y	Y
Harlow	N	Y	N	Y
Belcher	N	Y	Y	Y
Brown	Y	N	Y	Y
Choate	Y	Y	N	Y
Habedank	Y	Y	Y	Y
Lorello	Y	Y	Y	Y
Vermillion	Y	Y	Y	N

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

COMPACT WITH THE UNITED STATES

PROPOSAL ON FINAL CONSIDERATION

ARTICLE ___

COMPACT WITH THE UNITED STATES

All provisions of the enabling act of Congress (approved February 22, 1889, 25 Stat. 676, as amended) and of Ordinance No. 1, appended to the Constitution of the state of Montana and approved February 22, 1889, including the agreement and declaration that all lands owned or held by any Indian or Indian tribes shall remain under the absolute jurisdiction and control of the congress of the United States, continue in full force and effect until revoked by the consent of the United States and the people of Montana.

UNANIMOUS PROPOSAL

by

COMMITTEE ON STYLE, DRAFTING, SUBMISSION AND TRANSITION

COMPACT WITH THE UNITED STATES

BE IT PROPOSED BY THE COMMITTEE ON STYLE, DRAFTING, TRANSITION AND SUBMISSION:

That there be a new Article on Compact with the United States to read as follows:

ARTICLE ___

COMPACT WITH THE UNITED STATES

All provisions of the enabling act of Congress (approved February 22, 1889, 25 Stat. 676) and of Ordinance No. 1, appended to the Constitution of the state of Montana and approved February 22, 1889, including the agreement and declaration that all lands owned or held by any Indian or Indian tribes shall remain under the absolute jurisdiction and control of the congress of the United States, continue in full force and effect until revoked by the consent of the United States and the people of Montana.

John M. Schiltz
Chairman

William Burkhardt
Vice Chairman

D. I. Holland

Robert Lee Kelleher

Lucile Speer

Virginia H. Blend

ARTICLE ___

COMPACT WITH THE UNITED STATES

All provisions of the enabling act of Congress (approved February 22, 1889, 25 Stat. 676) and of Ordinance No. 1, appended to the Constitution of the state of Montana and approved February 22, 1889, including the agreement and declaration that all lands owned or held by any Indian or Indian tribes shall remain under the absolute jurisdiction and control of the congress of the United States, continue in full force and effect until revoked by the consent of the United States and the people of Montana.

John M. Schiltz___
Chairman

William Burkhardt__
Vice Chairman

D. L. Holland_____

Robert Lee Kelleher

Lucile Speer_____

Virginia H. Blend__

Chet Blaylock_____

J. C. Garlington___

Ber E. Berg_______

Richard E. Roeder__

Jerome T. Loendorf

* * * * *

COMMENTS

The proposed Article is a response to Delegate Proposal No. 15, which was referred to this Committee, and to other expressions of concern at the Convention. It is similar to a provision in the new North Dakota Constitution. Its only function is to

serve as a reminder that the guarantees upon which Congress conditioned the entry of Montana into the Union persist even though Ordinance.

STYLE AND DRAFTING REPORTS

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

REPORT OF COMMITTEE ON STYLE, DRAFTING,

TRANSITION AND SUBMISSION ON

SUFFRAGE AND ELECTIONS

NO. I

Date Reported: February 24, 1972

/s/ John M. Schiltz, Chairman

/s/ William A. Burkhardt, Vice Chairman

MONTANA CONSTITUTIONAL CONVENTION

COMMITTEE ON STYLE, DRAFTING,
TRANSITION AND SUBMISSION

TO: Montana Constitutional Convention

SUBJECT: SUFFRAGE AND ELECTIONS

Ladies and Gentlemen:

The Committee on Style, Drafting, Transition and Submission transmits revisions of the above Article for consideration of the Convention.

Immediately following this letter you will find the above Article as revised by the Committee, indicating (by underlining) words we have added and (by crossing out) words we have deleted from the Article as approved. Finally, there is an explanation of the changes we have made.

Sincerely,

/s/ John M. Schiltz,
Chairman of the Committee
on Style, Drafting, Transition
and Submission

/s/ William A. Burkhardt,
Vice Chairman of the Committee
on Style, Drafting, Transition
and Submission

BE IT PROPOSED BY THE GENERAL GOVERNMENT AND CONSTITUTIONAL AMENDMENT COMMITTEE:

That there be a new Article on Suffrage and Electors to read as follows:

ARTICLE ___

SUFFRAGE AND ELECTIONS

Section 1. BALLOT. All elections by the people shall be by secret ballot.

Section 2. QUALIFIED ELECTOR. Any citizen of the United States ~~who is~~ 18 years of age or older ~~, and~~ who meets the registration and residence requirements ~~as~~ provided by law is a qualified elector~~, except that no person who is~~ unless he is serving a sentence for a felony in a penal institution or ~~who~~ is ~~judged~~ of unsound mind, as determined by a court. ~~may vote.~~

Section 3. ELECTIONS. The legislature shall provide by law the requirements for ~~residency~~ residence, registration, absentee voting, and administration of elections. ~~The legislature~~ It may provide for a system of poll booth registration, and shall insure the purity of elections and guard against abuses of the electoral process.

Section 4. ELIGIBILITY FOR PUBLIC OFFICE. Any ~~person~~ qualified ~~to vote for state officers at general elections~~ elector is eligible to any public office except as otherwise provided in this Constitution~~, subject to any~~ The legislature may provide additional qualifications ~~provided by the legislature; provided, however, that~~ but no person convicted of a felony shall be eligible ~~qualified~~ to hold office ~~except upon~~ until his final discharge from state supervision.

Section 5. RESULT OF ELECTIONS. In all elections held by the people ~~under this Constitution~~, the person or persons receiving the ~~highest~~ largest number of ~~legal~~ votes shall be declared elected.

Section 6. PRIVILEGE FROM ARREST. ~~Electors shall in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at elections and in going to and returning therefrom.~~ A qualified elector is privileged from arrest at polling places and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace.

Report No. 1 -- SUFFRAGE AND ELECTIONS

Comments on style, form, and grammar

General: A title was added to each section.

Section 2: The grammatical changes achieve brevity without altering substance.

Section 4: The language deleted from lines 22 and 23 repeated the qualifications set forth in section 2. The form of lines 25 through 28 was changed to avoid the presence of "except," "subject to," and "provided, however" in the same sentence.

Section 5: The words deleted from line 30 are superfluous. The words "by the people" in line 29 may also be superfluous, but remain to insure certainty that "elections" were political (as opposed to corporate, for example). Re line 1, p. 2 "numbers" are "large" or "small", not "high" or "low". If a vote is not "legal", it is not a "vote".

Section 6: The Convention voted to adopt the language from the present Constitution, the style of which varies from that of this Article. The Committee on Style interpreted the existing language as intended to protect the voter from arrest only for acts committed enroute to the polls. It expressed that interpretation in the proposed substitute. The word "treason" has been omitted because it is the opinion of the Committee on Style that it is included within the term "felony".

ORDER OF BUSINESS NO. 5 --

FINAL CONSIDERATION STYLE AND DRAFTING --

SUFFRAGE AND ELECTIONS - NO. I

ARTICLE

SUFFRAGE AND ELECTIONS

Section 1. BALLOT. All elections by the people shall be by secret ballot.

Section 2. QUALIFIED ELECTOR. Any citizen of the United States 18 years of age or older who meets the registration and residence requirements provided by law is a qualified elector unless he is serving a sentence for a felony in a penal institution or is of unsound mind, as determined by a court.

Section 3. ELECTIONS. The legislature shall provide by law the requirements for residence, registration, absentee voting, and administration of elections. It may provide for a system of poll booth registration, and shall insure the purity of elections and guard against abuses of the electoral process.

Section 4. ELIGIBILITY FOR PUBLIC OFFICE. Any qualified elector is eligible to any public office except as otherwise provided in this Constitution. The legislature may provide additional qualifications but no person convicted of a felony shall be eligible to hold office until his final discharge from state supervision.

Section 5. RESULT OF ELECTIONS. In all elections held by the people, the person or persons receiving the largest number of votes shall be declared elected.

Section 6. PRIVILEGE FROM ARREST. A qualified elector is privileged from arrest at polling places and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace.

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

REPORT OF COMMITTEE ON STYLE, DRAFTING,

TRANSITION AND SUBMISSION ON

CONSTITUTIONAL REVISION

NO. II

Date Reported: February 26, 1972

/s/ John M. Schiltz, Chairman

/s/ William A. Burkhardt, Vice Chairman

TO: Montana Constitutional Convention

SUBJECT: CONSTITUTIONAL REVISION

Ladies and Gentlemen:

The Committee on Style, Drafting, Transition and Submission transmits revisions of the above Article for consideration of the Convention.

Immediately following this letter you will find the above Article as revised by the Committee. Following that is the Article indicating (by underlining) words we have added and (by crossing out) words we have deleted from the Article as approved. Finally, there is an explanation of the changes we have made.

Sincerely,

/s/ John M. Schiltz,
Chairman of the Committee
on Style, Drafting, Transition
and Submission

/s/ William A. Burkhardt,
Vice Chairman of the Committee
on Style, Drafting, Transition
and Submission

BE IT PROPOSED BY THE GENERAL GOVERNMENT AND CONSTITUTIONAL AMENDMENT COMMITTEE:

That there be a new Article on Constitutional Revision to read as follows:

ARTICLE ___

CONSTITUTIONAL REVISION

Section 1. CONSTITUTIONAL CONVENTION. The legislature, by an affirmative vote of two-thirds of all the members, whether one or more bodies, may at any time submit to the qualified electors the question of whether there shall be a Convention to revise, alter, or amend this Constitution.

Section 2. INITIATIVE FOR CONSTITUTIONAL CONVENTION. (1) The people may by initiative petition direct the secretary of state to submit to the qualified electors the question of whether there shall be a Convention to revise, alter, or amend this Constitution. The petition shall be signed by at least 10 percent of the qualified electors of the state. That number shall include at least 10 percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The secretary of state shall certify the filing of the petition in his office and cause the question to be submitted at the next general election.

Section 3. PERIODIC SUBMISSION. If the question of holding a Convention is not otherwise submitted during any period of 20 years, it shall be submitted as provided by law at the general election in the twentieth year following the last submission.

Section 4. CALL OF CONVENTION. If a majority of those voting on the question answer in the affirmative, the legislature shall provide for the calling thereof at its next session. The number of delegates to the Convention shall be the same as that of the larger body of the legislature. The qualifications of delegates shall be the same as the highest qualifications required for election to the legislature. The legislature shall determine whether the delegates may be nominated on a partisan or a nonpartisan basis. They shall be elected at the same places and in the same districts as are the members of the legislative body determining the number of delegates.

Section 5. CONVENTION EXPENSES. The legislature shall, in the act calling the Convention, designate the day, hour, and place of its meeting, and fix and provide for the pay of its members and officers and the necessary expenses of the Convention.

Section 6. OATH, VACANCIES. Before proceeding, the delegates shall take the oath provided in this Constitution. Vacancies occurring shall be filled in the manner provided for filling vacancies in the legislature if not otherwise provided by law.

Section 7. CONVENTION DUTIES. The Convention shall meet after the election of the delegates and prepare such revisions, alterations, or amendments to the Constitution as may be deemed necessary. They shall be submitted to the qualified electors for ratification or rejection as a whole or in separate articles or amendments as determined by the Convention at an election appointed by the Convention for that purpose not less than two months after adjournment. Unless so submitted and approved by a majority of the electors voting thereon, no such revision, alteration, or amendment shall take effect.

Section 8. AMENDMENT BY LEGISLATIVE REFERENDUM. Amendments to this Constitution may be proposed by any member of the legislature. If adopted by an affirmative roll call vote of two-thirds of all the members thereof, whether one or more bodies, the proposed amendment shall be submitted to the qualified electors at the next general election. If approved by a majority of the electors voting thereon, the amendment shall become a part of this Constitution on the first day of July after certification of the election returns unless the amendment provides otherwise.

Section 9. AMENDMENT BY INITIATIVE. (1) The people may also propose Constitutional amendments by initiative. Petitions including the full text of the proposed amendment shall be signed by at least 10 percent of the qualified electors of the state. That number shall include at least 10 percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The petitions shall be filed with the secretary of state who shall check and certify the validity of the signatures thereon. If the petitions are found to have been signed by the required number of electors, the secretary of state shall cause the amendment to be published as provided by law twice each month for two months previous to the next regular state-wide election.

(3) At that election, the proposed amendment shall be submitted to the qualified electors for approval or rejection. If approved by a majority voting thereon, it shall become a part of the Constitution effective the first day of July following its approval, unless the amendment provides otherwise.

Section 10. PETITION SIGNERS. The number of qualified electors required for the filing of any petition provided for in this Article shall be determined by the number of votes cast for governor in the preceding general election.

Section 11. SUBMISSION. If more than one amendment is submitted at the same election, each shall be so prepared and distinguished that it can be voted upon separately. BE IT PRO-

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POSED BY THE GENERAL GOVERNMENT AND CONSTITUTIONAL AMENDMENT COMMITTEE:

That there be a new Article or Constitutional Revision to read as follows:

ARTICLE ___

CONSTITUTIONAL REVISION

Section 1. CONSTITUTIONAL CONVENTION. ~~(1)~~ The legislature, by an affirmative vote of two-thirds of all the members ~~thereof~~, whether one or more bodies, may at any time submit to the qualified electors ~~of the state~~ the question of whether there shall be ~~an unlimited~~ Convention to revise, alter, or amend this Constitution.

Section 2. INITIATIVE FOR CONSTITUTIONAL CONVENTION. (1) The people may by initiative petition direct the secretary of state to submit to the qualified electors ~~voters of the state~~ the question of whether there shall be ~~an unlimited~~ a Convention to revise, alter, or amend this Constitution. The petition ~~must~~ shall be signed by at least 10 percent of the qualified electors ~~legal voters~~ of the state, ~~which~~ That number shall include at least 10 percent of the qualified electors ~~legal voters~~ in each of two-fifths of the legislative ~~representative~~ districts. ~~of the state.~~

(2) The ~~petition shall be filed with the~~ secretary of state, ~~who~~ shall certify the filing of the petition in his office ~~thereof~~ and cause the question to be submitted ~~to the voters~~ at the next general election.

Section 3. PERIODIC SUBMISSION. If the question of holding a Convention is not otherwise submitted ~~to the people at some time~~ during any period of 20 years, it shall be submitted as provided by law at the general election in the twentieth year following the last submission. ~~of such question.~~

Section 4. CALL OF CONVENTION. If a majority of those voting on the question answer in the affirmative, ~~shall declare in favor of such Convention,~~ the legislature ~~legislative assembly~~ shall ~~at its next session~~ provide for the calling thereof at its next session. The number of delegates to ~~members of~~ the Convention shall be the same as that of the ~~largest~~ larger body of the ~~legislative~~ legislature. ~~assembly.~~ The qualifications of ~~members~~ delegates shall be the same as the highest qualifications required for ~~membership in~~ election to the legislature. The legislature shall ~~may~~ determine whether the delegates ~~shall~~ may be ~~elected after nomination by political parties,~~ nominated on a partisan or ~~on~~ a non-partisan basis, ~~but~~ They shall be elected

at the same places and in the same districts as are the members of the legislative body determining the number of delegates.

Section 5. CONVENTION EXPENSES. The ~~legislative assembly~~ legislature shall, in the act calling the Convention, designate the day, hour, and place of its meeting, and fix and provide for the pay of its members and officers~~, and provide for the payment of the same, together with~~ and the necessary expenses of the Convention.

Section 6. OATH, VACANCIES. Before proceeding, the ~~members~~ delegates shall take the oath ~~otherwise~~ provided in this Constitution. ~~The qualifications of members shall be the same as the highest qualifications required for membership in the legislature.~~ Vacancies occurring shall be filled in the manner provided for filling vacancies in the legislature ~~legislative assembly, or as if not~~ otherwise provided by law.

Section 7. CONVENTION DUTIES. The Convention shall meet after the election of the delegates and prepare such revisions, alterations, or amendments to the Constitution as may be deemed necessary~~, which~~. They shall be submitted to the qualified electors for ~~their~~ ratification or rejection as a whole or in separate articles or amendments as determined by the Convention ~~and~~ at an election appointed by the Convention for that purpose~~, or at the next general election, but~~ not less than two months after ~~the~~ adjournment~~ thereof~~. Unless so submitted and approved by a majority of the electors voting thereon, no such revision, alteration, or amendment shall take effect.

Section 8. ~~CONSTITUTIONAL~~ AMENDMENT BY ~~THE LEGISLATURE~~. LEGISLATIVE REFERENDUM. Amendments to this Constitution may be proposed by any member of the legislature~~, legislative assembly~~. If adopted by an affirmative roll call vote of two-thirds of all the members thereof, whether one or more bodies, the proposed amendment shall ~~become a part of the Constitution when approved by the following procedure:~~

~~Section 9. The legislative assembly shall refer the proposed amendment~~ be submitted to the qualified electors ~~voters of the state of Montana to be voted or in~~ at the next general election~~, held in the state~~. If approved by a majority of the electors voting thereon, the amendment shall become a part of this Constitution on the first day of July after certification of the election returns unless the amendment ~~otherwise~~ provides~~; or~~ otherwise.

Section ~~10~~ 9. ~~CONSTITUTIONAL~~ AMENDMENT BY INITIATIVE. (1) The people ~~of Montana~~ may also propose Constitutional amendments by initiative~~, process~~. Petitions ~~shall~~ including ~~include~~ the full text of the proposed amendment ~~and~~ shall be signed by ~~not less than~~ at least 10 percent of the ~~legal voters~~ qualified electors of the state~~, in Montana which~~ That number shall include at least 10 percent of the qualified electors ~~legal voters~~ in each

of two-fifths of the legislative ~~representative~~ districts. ~~of Montana.~~

(2) The petitions shall be filed with the secretary of state, who shall ~~cause the same to be checked~~ check and ~~certified as to~~ certify the validity of the signatures thereon. ~~and,~~ If the petitions are found to ~~be~~ have been signed by the required number of electors, ~~voters~~ the secretary of state shall cause the amendment ~~same~~ to be published ~~in such manner~~ as provided by law twice each month for two months previous to the next regular state-wide election, ~~at which time the proposed amendment shall be voted on.~~

(3) If ~~said~~ that election, the proposed amendment shall be submitted to the qualified electors ~~of the state~~ for ~~their~~ approval or rejection. If approved by a majority voting thereon, it shall become a part of the Constitution effective the first day of July following its approval, unless ~~otherwise provided in~~ the amendment ~~provides otherwise.~~

Section ~~11~~ 10. ~~LEGAL VOTERS~~ PETITION SIGNERS. ~~The number of votes cast for the office of governor in the general election immediately preceding the filing of any petition provided for in this Article shall determine the number of legal votes.~~ The number of qualified electors required for the filing of any petition provided for in this Article shall be determined by the number of votes cast for governor in the preceding general election.

Section ~~12~~ 11. SUBMISSION. ~~Should~~ If more than one ~~amendments~~ amendment ~~than one be~~ is submitted at the same election, ~~they~~ each shall be so prepared and distinguished ~~by numbers or otherwise~~ that it ~~each~~ can be voted upon separately.

Report #2 - Constitutional Revision

COMMENTS ON STYLE, FORM, AND GRAMMAR

General: 1. Section titles were added as necessary.

2. The phrase "qualified elector", adopted in report #1, was substituted for "legal voter" or its equivalent.

Section 1. The adjective "unlimited" was deleted from line 12 and line 17, section 2, because its presence is not necessary to provide for such power. In addition, its presence would make possible an interpretation that there is no power to call a "limited" Convention.

Section 2. The structural changes do not alter substance, but clarify the Convention's intention to require that the number of petitioners be spread across the state. Adding subsections serves clarity.

Section 3. The words deleted are superfluous. Adding "as provided by law" empowers the legislature to identify the submitter.

Section 4. Deletion, substitution, and rearrangement of language does not alter substance. The noun "delegate" was substituted for "member" because it is more appropriate.

Section 5. Grammatical changes do not alter substance.

Section 6. Two changes of labels, deletion of "otherwise" in line 18, and moving one sentence to section 4, do not alter substance.

Section 7. Structural change and deletion of superfluity do not alter substance.

Sections 8 and 9. The operative portions of each section were combined to produce one section with no change in substance.

Section 10. Renumbered "9". Structural changes and removal of superfluity do not alter substance. That portion prescribing the number of signers accords with the alteration in section 2.

Section 11. Renumbered "10". Sentence structure has been altered for clarity without change in substance.

Section 12. Renumbered "11". Structural change and deletion of superfluity do not alter substance.

ORDER OF BUSINESS NO. 5 -

FINAL CONSIDERATION STYLE AND DRAFTING

CONSTITUTIONAL REVISION - NO. II

ARTICLE

CONSTITUTIONAL REVISION

Section 1. CONSTITUTIONAL CONVENTION. The legislature, by an affirmative vote of two-thirds of all the members, whether one or more bodies, may at any time submit to the qualified electors the question of whether there shall be an unlimited Convention to revise, alter, or amend this Constitution.

Section 2. INITIATIVE FOR CONSTITUTIONAL CONVENTION. (1) The people may by initiative petition direct the secretary of state to submit to the qualified electors the question of whether there shall be an unlimited Convention to revise, alter, or amend this Constitution. The petition shall be signed by at least 10 percent of the qualified electors of the state. That number shall include at least 10 percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The secretary of state shall certify the filing of the petition in his office and cause the question to be submitted at the next general election.

Section 3. PERIODIC SUBMISSION. If the question of holding a Convention is not otherwise submitted during any period of 20 years, it shall be submitted as provided by law at the general election in the twentieth year following the last submission.

Section 4. CALL OF CONVENTION. If a majority of those voting on the question answer in the affirmative, the legislature shall provide for the calling thereof at its next session. The number of delegates to the Convention shall be the same as that of the larger body of the legislature. The qualifications of delegates shall be the same as the highest qualifications required for election to the legislature. The legislature shall determine whether the delegates may be nominated on a partisan or a non-partisan basis. They shall be elected at the same places and in the same districts as are the members of the legislative body determining the number of delegates.

Section 5. CONVENTION EXPENSES. The legislature shall, in the act calling the Convention, designate the day, hour, and place of its meeting, and fix and provide for the pay of its members and officers and the necessary expenses of the Convention.

Section 6. OATH, VACANCIES. Before proceeding, the dele-

gates shall take the oath provided in this Constitution. Vacancies occuring shall be filled in the manner provided for filling vacancies in the legislature if not otherwise provided by law.

Section 7. CONVENTION DUTIES. The Convention shall meet after the election of the delegates and prepare such revisions, alterations, or amendments to the Constitution as may be deemed necessary. They shall be submitted to the qualified electors for ratification or rejection as a whole or in separate articles or amendments as determined by the Convention at an election appointed by the Convention for that purpose not less than two months after adjournment. Unless so submitted and approved by a majority of the electors voting thereon, no such revision, alteration or amendment shall take effect.

Section 8. AMENDMENT BY LEGISLATIVE REFERENDUM. Amendments to this Constitution may be proposed by any member of the legislature. If adopted by an affirmative roll call vote of two-thirds of all the members thereof, whether one or more bodies, the proposed amendment shall be submitted to the qualified electors at the next general election. If approved by a majority of the electors voting thereon, the amendment shall become a part of this Constitution on the first day of July after certification of the election returns unless the amendment provides otherwise.

Section 9. AMENDMENT BY INITIATIVE. (1) The people may also propose Constitutional amendments by initiative. Petitions including the full text of the proposed amendment shall be signed by at least 10 percent of the qualified electors of the state. That number shall include at least 10 percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The petitions shall be filed with the secretary of state. If the petitions are found to have been signed by the required number of electors, the secretary of state shall cause the amendment to be published as provided by law twice each month for two months previous to the next regular state-wide election.

(3) At that election, the proposed amendment shall be submitted to the qualified electors for approval or rejection. If approved by a majority voting thereon, it shall become a part of the Constitution effective the first day of July following its approval, unless the amendment provides otherwise.

Section 10. PETITION SIGNERS. The number of qualified electors required for the filing of any petition provided for in this Article shall be determined by the number of votes cast for the office of governor in the preceding general election.

Section 11. SUBMISSION. If more than one amendment is submitted at the same election, each shall be so prepared and distinguished that it can be voted upon separately.

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

REPORT OF COMMITTEE ON STYLE, DRAFTING,

TRANSITION AND SUBMISSION ON

LEGISLATIVE - UNICAMERAL AND BICAMERAL

NO. III

Date Reported: March 2, 1972

/s/ John M. Schiltz, Chairman

/s/ William A. Burkhardt, Vice Chairman

TO: Montana Constitutional Convention

SUBJECT: LEGISLATIVE - UNICAMERAL AND BICAMERAL

Ladies and Gentlemen:

The Committee on Style, Drafting, Transition and Submission transmits revisions of the above Article for consideration of the Convention.

Immediately following this letter you will find the above Article as revised by the Committee. Following that is the Article indicating (by underlining) words we have added and (by crossing out) words we have deleted from the Article as approved. Finally, there is an explanation of the charges we have made.

Sincerely,

/s/ John M. Schiltz
Chairman of the Committee
on Style, Drafting, Transition
and Submission

/s/ William A. Burkhardt
Vice Chairman of the Committee
on Style, Drafting, Transition
and Submission

Unicameral

BE IT PROPOSED BY THE LEGISLATIVE COMMITTEE:

That there be a new Article on the Legislature to read as follows:

ARTICLE V

THE LEGISLATURE

Section 1. POWER AND STRUCTURE. The legislative power is vested in a legislature of one chamber whose members are designated senators. The people reserve to themselves the powers of initiative and referendum.

Section 2. SIZE. The number of senators shall be provided by law, but it shall not be smaller than 100 nor larger than 105.

Section 3. ELECTION AND TERMS. A senator shall be elected for a term of four years to begin on a date provided by law. One-half of the senators shall be elected every two years.

Section 4. QUALIFICATIONS. A candidate shall be a resident of the state for at least one year next preceding the general election. For six months next preceding the general election, he shall be a resident of the county if it contains one or more districts or of the district if it certains all or parts of more than one county.

Section 5. COMPENSATION. (1) Each senator shall receive compensation for his services and allowances provided by law. No legislature may fix its own compensation.

(2) The legislature shall create a salary commission to recommend compensation for the judiciary and elected members of the legislative and executive departments.

Section 6. SESSIONS. The legislature shall be a continuous body for two-year periods beginning when newly elected senators take office. Any business, bill, or resolution pending at adjournment of a session shall carry over with the same status to any other session of the legislature during the biennium. The legislature shall meet at least once a year in regular sessions of not more than 60 legislative days. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor or at the written request of a majority of the senators.

Section 7. VACANCIES. A vacancy in the legislature shall be

filled by special election for the unexpired term unless otherwise provided by law.

Section 8. IMMUNITY. A senator is privileged from arrest during attendance at sessions of the legislature and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace. He shall not be questioned in any other place for any speech or debate in the legislature.

Section 9. DISQUALIFICATION. During the term for which he is elected, a senator shall not hold any civil, federal, state, county, or municipal office. This prohibition does not apply to a notary public or a member of the militia.

Section 10. ORGANIZATION AND PROCEDURE. (1) The legislature shall judge the election and qualifications of senators. It may vest in the courts the power to try and determine contested elections. It shall choose its officers from among its members, keep a journal, and make rules for its proceedings. It may expel or punish a senator for good cause shown with the concurrence of two-thirds of all the senators.

(2) A majority of the senators constitutes a quorum. A smaller number may adjourn from day to day and compel attendance of absent members.

(3) The sessions of the legislature and of the committee of the whole, all committee meetings, and all hearings shall be open to the public.

(4) The legislature may establish a legislative council and other interim committees.

Section 11. BILLS. (1) A law shall be passed by bill which shall not be so altered or amended on its passage through the legislature as to change its original purpose. No bill shall become law except by a vote of the majority of all senators present.

(2) Every vote of each senator on each substantive question in the legislature, in any committee, or in committee of the whole shall be recorded and made public. On final passage, the vote shall be taken by ayes and noes and the names entered on the journal.

(3) Each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject, clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void.

(4) A general appropriation bill shall contain only appropriations for the ordinary expenses of the legislative, executive, and judicial departments, for interest on the public debt,

and for public schools. Every other appropriation shall be made by a separate bill containing but one subject.

(5) No appropriation shall be made for religious, charitable, industrial, educational, or benevolent purposes to any private individual, private association, or private corporation not under control of the state.

(6) A law may be challenged on the ground of noncompliance with this section only within two years after its effective date.

Section 12. LOCAL AND SPECIAL LEGISLATION. The legislature shall not pass a special or local act when a general act is, or can be made, applicable.

Section 13. IMPEACHMENT. (1) The governor, executive officers, heads of state departments, judicial officers, and such other officers as may be made subject to impeachment by law shall be removed from office upon conviction of impeachment. Other proceedings for removal from public office for cause may be provided by law.

(2) The legislature shall provide for the manner, procedure, and causes for removal by impeachment and shall provide for a tribunal.

(3) Impeachment can be brought only by a two-thirds vote of the legislature. The tribunal hearing the charges shall convict for impeachment only by a vote of two-thirds or more of its members.

(4) Conviction shall extend only to removal from office, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law.

Section 14. DISTRICTING AND APPORTIONMENT. (1) For the purpose of election, the state shall be divided into as many districts as there are senators. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.

(2) In the legislative session following ratification of this Constitution and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of the legislature shall each select two commissioners. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time provided, a majority of the supreme court shall select him.

(3) The commission shall submit its plan to the legislature

at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendations. Within 30 days thereafter, the commission shall file its final plan with the secretary of state and it shall become law. The commission is then dissolved.

Section 15. REFERENDUM OF UNICAMERAL LEGISLATURE. (1) In 1980 the secretary of state shall place upon the ballot at the general election the question: "Shall the unicameral legislature form be continued?"

(2) If a majority of the qualified electors voting on the question answer in the affirmative, the term shall be continued, and this section shall be of no further effect.

(3) If a majority of the qualified electors voting on the question answer in the negative, Article ___ of this Constitution is amended by deleting sections 1, 2, 3, 10, 13, and 14, and inserting in lieu thereof the following:

(a) "Section 1. POWER AND STRUCTURE. The legislative power is vested in a legislature consisting of a senate and a house of representatives. The people reserve to themselves the powers of initiative and referendum."

(b) "Section 2. SIZE. The size of the legislature shall be provided by law, but the senate shall not have more than 53 or fewer than 50 members and the house shall not have more than 106 or fewer than 100 members."

(c) "Section 3. ELECTION AND TERMS. A member of the house of representatives shall be elected for a term of two years and a member of the senate for a term of four years, each to begin on a date provided by law. One-half of the senators shall be elected every two years."

(d) "Section 10. ORGANIZATION AND PROCEDURE. (1) Each house shall judge the election and qualifications of its members. It may by law vest in the courts the power to try and determine contested elections. Each house shall choose its officers from among its members, keep a journal, and make rules for its proceedings. Each house may expel or punish a member for good cause shown with the concurrence of two-thirds of all its members."

"(2) A majority of each house constitutes a quorum. A smaller number may adjourn from day to day and compel attendance of absent members."

"(3) The sessions of the legislature and of the committee of the whole, all committee meetings, and all hearings shall be open to the public."

"(4) The legislature may establish a legislative council

and other interim committees."

"(5) Neither house shall, without the consent of the other, adjourn or recess for more than three days or to any place other than that in which the two houses are sitting."

(e) "Section 13. IMPEACHMENT. (1) The governor, executive officers, heads of state departments, judicial officers, and such other officers as may be made subject by law shall be removed from office upon conviction of impeachment. Other proceedings for removal from public office for cause may be provided by law.

"(2) The legislature shall provide for the manner, procedure and causes for removal by impeachment and may select the senate as tribunal.

"(3) Impeachment shall be brought only by a two-thirds vote of the house. The tribunal hearing the charges shall convict for impeachment only by a vote of two-thirds or more of its members.

"(4) Conviction shall extend only to removal from office, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law."

(f) "Section 14. DISTRICTING AND APPORTIONMENT. (1) The state shall be divided into as many districts as there are members of the house, and each district shall elect one representative. Each senate district shall be composed of two adjoining house districts, and shall elect one senator. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.

"(2) In the legislative session following this amendment and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of each house shall each designate one commissioner. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time provided, a majority of the supreme court shall select him.

"(3) The commission shall submit its plan to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendations. Within 30 days thereafter, the commission shall file its final plan with the secretary of state and it shall become law. The commission is then dissolved."

(4) The members of the unicameral legislature shall remain in office and their authority to act shall continue until the

members of a bicameral body are elected and qualified.

(5) The senate chamber existing upon the date of adoption of this Article shall remain intact until the election provided for in this section has determined whether the unicameral legislature is to continue.

(6) When the provisions of this section have been carried out, it shall be of no further effect.

Section 16. PROHIBITED PAYMENTS. Except for interest on the public debt, no money shall be paid out of the treasury unless upon an appropriation made by law and a warrant drawn by the proper officer in pursuance thereof.

Section 17. CODE OF ETHICS. The legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for senators and all state and local officers and employees.

Unicameral

BE IT PROPOSED BY THE LEGISLATIVE COMMITTEE:

That there be a new Article of the Legislature to read as follows:

ARTICLE V

THE LEGISLATURE

Section 1. POWER AND STRUCTURE. The legislative power ~~of the state~~ is vested in ~~the~~ a legislature~~, consisting~~ of one chamber whose members are designated senators. The people reserve to themselves the ~~power~~ powers of initiative and referendum.

Section 2. SIZE. The number of senators shall be ~~prescribed~~ provided by law, but ~~there~~ it shall not be ~~not less~~ smaller than 100 ~~members~~ nor ~~more~~ larger than 105.

Section 3. ELECTION ~~AND TERMS OF MEMBERS~~. A senator shall be elected for a term of four years to begin on a date provided by law. One-half of the senators shall be elected every two years. ~~A senator's term shall begin on a date provided by law.~~

Section 4. QUALIFICATIONS. A candidate ~~for the legislature~~ shall be a resident of the state for at least one year next preceding the general election. For six months ~~prior to~~ next preceding the general election, he ~~must~~ shall be a resident of the county ~~which~~ if it contains one or more districts~~, and where a~~ or of the district if it ~~consists~~ contains all or parts of more than one county~~, he must reside within that district~~.

Section 5. COMPENSATION. (1) Each ~~member of the legislature~~ senator shall receive compensation for his services and allowances ~~as may be prescribed~~ provided by law. No legislature may fix its own compensation.

(2) The legislature shall create ~~A~~ a salary commission ~~shall be created by the legislature~~ to recommend compensation for the judiciary and elected members of the legislative~~,~~ and executive~~, and judicial compensation~~. departments.

Section 6. SESSIONS. The legislature shall be a continuous body for two-year periods beginning ~~on the date~~ when newly elected ~~members~~ senators take office. Any business, bill, or resolution pending at adjournment of a session shall carry over with the same status to any ~~further~~ other session of the legislature during the biennium. The legislature shall meet at least once a year in regular sessions of not more than 60 legislative

days ~~or less~~. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor or at the written request of a majority of the ~~members~~ senators.

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Section 9. DISQUALIFICATION. ~~No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office under the state; and no member of congress, or other person holding an office (except notary public, or in the militia) under the United States or this state, shall be a member of either house during his continuance in office.~~ During the term for which he is elected, a senator shall not hold any civil, federal, state, county, or municipal office. This prohibition does not apply to a notary public or a member of the militia.

Section 10. ORGANIZATION AND PROCEDURE. (1) The legislature shall judge the election and qualifications of ~~its members~~ senators. ~~and~~ It may ~~by law~~ vest in the courts the ~~trial and determination of~~ power to try and determine contested elections ~~of its members~~. It shall choose its officers from among its members~~;~~, keep a journal~~;~~, and make rules for its proceedings~~; and~~. It may expel or punish a ~~member~~ senator for good cause shown with the concurrence of two-thirds of all ~~its members~~ the senators.

(2) A majority of the ~~membership of the legislature~~ senators constitutes a quorum ~~to do business~~. A smaller number may adjourn from day to day and compel attendance of absent members.

(3) The sessions of the legislature~~,~~ and of the committee of the whole~~,~~ ~~and~~ all committee meetings, and all hearings shall be open to the public.

(4) ~~There may be a legislative council and~~ The legislature may establish a legislative council and other interim committees.

Section 11. BILLS. (1) A law shall be passed by bill~~, and a bill~~ which shall not be so altered or amended on its passage through the legislature as to change its original purpose. No

bill shall become law except by a vote of the majority of all senators present.

(2) ~~The vote of each member of the legislature and its committees or any substantive question shall be recorded and made public.~~ Every vote of each senator on each substantive question in the legislature, in any committee, or in committee of the whole shall be recorded and made public.

~~(3) No bill shall become law except by a vote of the majority of all members present, and on~~ On final passage, the vote shall be taken by ayes and noes and the names entered on the journal.

~~(4)~~ (3) Each bill, except general appropriation bills, and bills for the codification and general revision of the laws, shall contain only one subject, ~~which shall be~~ clearly expressed in its title~~, but if~~ If any subject ~~shall be~~ is embraced in any act ~~which shall~~ and is not ~~be~~ expressed in the title, ~~such act shall be void~~ only ~~as to~~ so much ~~thereof as shall~~ of the act not ~~be~~ so expressed is void. ~~A law may be challenged on the grounds of non-compliance with this section within two years after its effective date but not after that period.~~

~~(5)~~ (4) A ~~General~~ general appropriation ~~bills~~ bill shall contain only appropriations for the ordinary expenses of the legislative, executive, and judicial departments ~~of the state~~, for interest on the public debt, and for public schools. ~~All~~ Every other ~~appropriations~~ appropriation shall be made by a separate bill ~~bills, each~~ containing but one subject.

~~(6)~~ (5) No appropriation shall be made for religious, charitable, industrial, educational, or benevolent purposes to any private individual, private association, or private corporation not under control of the state.

(6) A law may be challenged on the ground of noncompliance with this section only within two years after its effective date.

Section 12. LOCAL AND SPECIAL LEGISLATION. The legislature ~~may~~ shall not pass a special or local act when a general act is, or can be made, applicable.

Section 13. IMPEACHMENT. (1) The governor, executive officers, heads of state departments, judicial officers, and such other officers as may be made subject to impeachment by law ~~may~~ shall be removed from office upon conviction of impeachment. Other proceedings for removal from public office for cause may be provided by law.

(2) The legislature shall provide for the manner, procedure, and causes for removal by impeachment and shall provide for a tribunal.

(3) Impeachment can be brought only by a two-thirds vote of the ~~senate~~ legislature. The tribunal hearing the charges shall convict ~~and no conviction~~ for impeachment ~~shall be made except~~ only by a vote of two-thirds or more of ~~the~~ its members ~~of the tribunal hearing the charges~~.

(4) ~~Such conviction~~ Conviction shall ~~only~~ extend only to removal from office, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law.

Section 14. DISTRICTING AND APPORTIONMENT. (1) For the purpose of ~~electing members of the legislature,~~ election the state shall be divided into as many districts as there ~~shall be members of the legislature~~ are senators. Each ~~legislative~~ district shall consist of compact and contiguous territory, ~~and~~ All districts shall be ~~so~~ as nearly equal in population as is practicable.

(2) In the legislative session following ratification of this Constitution and thereafter in ~~the~~ each session preceding each federal population census ~~made by the authority of the United States,~~ a ~~committee~~ commission of five citizens, none of whom may be public officials, shall be ~~designated~~ selected to ~~draft~~ prepare a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of the legislature shall each ~~designate~~ select two commissioners. ~~The four commissioners, within~~ Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time provided ~~prescribed~~, a majority of the supreme court shall ~~appoint the chairman~~ select him.

(3) The ~~appointed~~ commission shall ~~draw up a plan for reapportioning and redistricting legislative and congressional districts and~~ submit ~~this~~ its plan to the legislature at the first regular session after ~~ratification of this Constitution~~ its appointment or after the census figures are available. Within ~~(30) thirty~~ days after ~~the~~ submission, ~~to it~~ the legislature shall return the plan to the commission with its recommendations, ~~for change and the commission shall within~~ Within ~~(30) thirty~~ days thereafter, the commission shall file ~~with the Secretary of State~~ its final plan with the secretary of state and ~~the same~~ it shall become law. ~~After enactment of a valid plan this~~ The commission ~~shall be~~ is then dissolved.

Section 15. REFERENDUM OF UNICAMERAL LEGISLATURE. (1) In 1980 the secretary of state shall place upon the ballot at the ~~next following~~ general election the question: "Shall the unicameral legislature form be continued?"

(2) If a majority of the qualified electors voting on the question answer in the affirmative, the form shall be continued, and this section shall be of no further effect.

(3) If a majority of the qualified electors voting on the question answer in the negative, ~~the provisions of section 1, "POWER AND STRUCTURE"; Section 2, "SIZE"; Section 3, "ELECTION AND TERMS OF MEMBERS"; Section 10, "ORGANIZATION AND PROCEDURE"; Section 13, "IMPEACHMENT"; and Section 15, "DISTRICTING AND APPORTIONMENT" as set forth in the bicameral legislative proposal shall be substituted for Sections 1, 2, 3, 10, 13, and 15 of this unicameral article and be controlling upon the composition of future legislative assemblies.~~ Article ____ of this Constitution is amended by deleting sections 1, 2, 3, 10, 13, and 14, and inserting in lieu thereof the following:

(a) "Section 1. POWER AND STRUCTURE. The legislative power is vested in a legislature consisting of a senate and a house of representatives. The people reserve to themselves the powers of initiative and referendum."

(b) "Section 2. SIZE. The size of the legislature shall be provided by law, but the senate shall not have more than 53 or fewer than 50 members and the house shall not have more than 106 or fewer than 100 members."

(c) "Section 3. ELECTION AND TERMS. A member of the house of representatives shall be elected for a term of two years and a member of the senate for a term of four years, each to begin on a date provided by law. One-half of the senators shall be elected every two years."

(d) "Section 10. ORGANIZATION AND PROCEDURE. (1) Each house shall judge the election and qualifications of its members. It may by law vest in the courts the power to try and determine contested elections. Each house shall choose its officers from among its members, keep a journal, and make rules for its proceedings. Each house may expel or punish a member for good cause shown with the concurrence of two-thirds of all its members.

"(2) A majority of each house constitutes a quorum. A smaller number may adjourn from day to day and compel attendance of absent members.

"(3) The sessions of the legislature and of the committee of the whole, all committee meetings, and all hearings shall be open to the public.

"(4) The legislature may establish a legislative council and other interim committees.

"(5) Neither house shall, without the consent of the other, adjourn or recess for more than three days or to any place other than that in which the two houses are sitting."

(e) "Section 13. IMPEACHMENT. (1) The governor, executive officers, heads of state departments, judicial officers, and such other officers as may be made subject by law shall be removed

from office upon conviction of impeachment. Other proceedings for removal from public office for cause may be provided by law.

"(2) The legislature shall provide for the manner, procedure, and causes for removal by impeachment and may select the senate as tribunal.

"(3) Impeachment shall be brought only by a two-thirds vote of the house. The tribunal hearing the charges shall convict for impeachment only by a vote of two-thirds or more of its members.

"(4) Conviction shall extend only to removal from office, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law."

(f) "Section 14. DISTRICTING AND APPORTIONMENT. (1) The state shall be divided into as many districts as there are members of the house, and each district shall elect one representative. Each senate district shall be composed of two adjoining house districts, and shall elect one senator. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.

"(2) In the legislative session following this amendment and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of each house shall each designate one commissioner. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time provided, a majority of the supreme court shall select him.

"(3) The commission shall submit its plan to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendations. Within 30 days thereafter, the commission shall file its final plan with the secretary of state and it shall become law. The commission is then dissolved."

(4) The members of the unicameral legislature shall remain in office and their authority to act shall continue until ~~their successors to~~ the members of a bicameral body ~~can be~~ are elected and qualified.

(5) The ~~present~~ Senate chamber existing upon the date of adoption of this article shall remain intact until ~~such~~ the election provided for in this section has determined whether the unicameral legislature is to ~~continued~~ continue.

(6) When the provisions of this section have been carried

out, it shall be of no further effect.

Section 16. PROHIBITED PAYMENTS. Except for interest on the public debt, ~~No~~ no money shall be paid out of the treasury ~~except~~ unless upon an appropriations made by law, and ~~on~~ a warrant drawn by the proper officer in pursuance thereof, ~~--except--interest--on the-public-debt~~.

Section 17. CODE OF ETHICS. ~~A-code-of-ethics-for-all-state and-local-officials,-officers,-legislators,-and-state--and--local employees--prohibiting--conflict--between-public-duty-and-private interest-shall-be-described-by-law.~~ The legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for senators and all state and local officers and employees.

Report No. 3 - Legislative - (Unicameral)

COMMENTS ON STYLE, FORM, AND GRAMMAR

Section 1. Deletion of unnecessary words does not change substance. The addition of "s" to "power" is self-explanatory.

Section 2. Grammatical changes do not alter substance.

Section 3. Rearrangement does not alter substance.

Section 4. As the second sentence came from the Committee of the Whole, it did not require six months' residence in a multi-county district. Because there did not appear to be a substantive reason for the difference, the drafting change does require such residence. Additions concern districts which may consist of only parts of more than one county.

Section 5. Here and throughout the rest of the Article, the label "senator" was substituted for "member for the legislature," in order that the unicameral and bicameral alternatives might be separate. Other changes do not alter substance. The second sentence of subsection (1) permits a "carryover" senator to fix his own compensation.

Section 6. No change in substance.

Section 8. The provision has been rewritten to accord with the treatment of the elector's privilege in section 6, SUFFRAGE AND ELECTIONS. There is no change in substance.

Section 9. The rewriting attempts to update style, and to avoid repetition of the phrase "under the state," the meaning of which is unclear.

Section 10. Changes to accomplish clarity and brevity do not affect substance. Addition of "for good cause shown" to the last sentence of subsection (1) clarifies the extent of the power.

Section 11. Changes in language and order do not alter substance. The last sentence of subsection (3) becomes subsection (6).

Section 12. The verb has been changed to make certain the prohibition.

Section 13. The change in verb in subsection (1) makes clear that removal is required. Other changes do not alter substance.

Section 14. Line 3: "Commission" was substituted for "committee" because the members are called "commissioners". The lan-

guage of the proposal in what is now the first sentence of subsection (3) could have been read to require the first commission to report to the session which appointed it. The alteration in language seeks to avoid that construction.

Section 15. As it came from Committee of the Whole, subsection (3) attempted to amend the Constitution without providing a method or the substantive content of the amendment. The new subsection (3) supplies those omissions but is not a change in substance. Changes in language in other subsections do not alter substance.

Sections 16 and 17. Titles were added. Rewriting does not alter substance. Both sections will probably be moved to other more appropriate Articles later.

Bicameral

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Section 1. POWER AND STRUCTURE. The legislative power is vested in a legislature consisting of a senate and a house of representatives. The people reserve to themselves the powers of intitiative and referendum.

Section 2. SIZE. The size of the legislature shall be provided by law, but the senate shall not have more than 53 or fewer than 50 members and the house shall not have more than 106 or fewer than 100 members.

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(2) The legislature shall create a salary commission to recommend compensation for the judiciary and elected members of the legislative and executive departments.

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lature may be convened in special sessions by the governor or at the written request of a majority of the members.

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Section 10. ORGANIZATION AND PROCEDURE. (1) Each house shall judge the election and qualifications of its members. It may by law vest in the courts the power to try and determine contested elections. Each house shall choose its officers from among its members, keep a journal, and make rules for its proceedings. Each house may expel or punish a member for good cause shown with the concurrence of two-thirds of all its members.

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(2) Every vote of each member of the legislature on each substantive question in the legislature, in any committee, or in committee of the whole shall be recorded and made public. On final passage, the vote shall be taken by ayes and noes and the names entered on the journal.

(3) Each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject, clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void.

(4) A general appropriation bill shall contain only appropriations for the ordinary expenses of the legislative, executive, and judicial departments, for interest on the public debt, and for public schools. Every other appropriation shall be made by a separate bill, containing but one subject.

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(2) In the legislative session following ratification of this Constitution and thereafter in each session preceding each federal population census, a commission of five citizens, none of

whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of each house shall each designate one commissioner. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall select him.

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(3) Impeachment ~~can~~ shall be brought only by a two-thirds vote of the house. ~~and no conviction~~ The tribunal hearing the charges shall convict for impeachment ~~shall be made except~~ only by a vote of two-thirds or more of ~~the~~ its members ~~of the tribunal hearing the charges~~.

(4) ~~Such conviction~~ Conviction shall ~~only~~ extend only to removal from office, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law.

Section 14. DISTRICTING AND APPORTIONMENT. (1) The state shall be divided into as many ~~house~~ districts as there are ~~representatives~~ members of the house, and each district shall elect one representative. Each senate district shall be ~~comprised~~ composed of two adjoining ~~representative~~ house districts, ~~for the election of~~ and shall elect one senator. ~~Every~~ Each ~~legislative~~ district shall consist of compact and contiguous territory. ~~and~~ All districts shall be ~~so~~ as nearly equal in population as is practicable.

(2) In the legislative session following ratification of this Constitution and thereafter in ~~the~~ each session preceding each federal population census ~~made by the authority of the United States~~, a ~~committee~~ commission of five citizens, none of whom may be public officials, shall be ~~designated~~ selected to ~~draft~~ prepare a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of each house shall each designate a one commissioner. ~~The four commissioners, within~~ Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall ~~appoint the chairman~~ select him.

(3) The ~~appointed~~ commission shall ~~draw up a plan for reapportioning and redistricting legislative and congressional districts and~~ submit ~~this~~ its plan to the legislature at the first regular session after ~~ratification of this Constitution~~ its appointment or after the census figures are available. Within ~~(30) thirty~~ days after ~~the~~ submission, ~~to it~~ the legislature shall return the plan to the commission with its recommendations. ~~for change and the commission shall within~~ Withir ~~(30) thirty~~

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days thereafter the commission shall file ~~with the Secretary of State~~ its final plan with the secretary of state and ~~the same~~ it shall become law. ~~After enactment of a valid plan this~~ The commission ~~shall be~~ is then dissolved.

Section 15. PROHIBITED PAYMENTS. Except for interest on the public debt, ~~no~~ no money shall be paid out of the treasury ~~except~~ unless upon an ~~appropriations~~ appropriation made by law, and ~~on~~ a warrant drawn by the proper officer in pursuance thereof, ~~except interest on the public debt~~.

Section 16. CODE OF ETHICS. ~~A code of ethics for all state and local officials, officers, legislators, and state and local employees prohibiting conflict between public duty and private interest shall be described by law.~~ The legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for senators and all state and local officers and employees.

Report No. 3 -

Legislative - (Bicameral)

COMMENTS ON STYLE, FORM, AND GRAMMAR

NB - Only comments which differ from those applied to the UNICAMERAL proposal appear here.

Sections 1, 2, 3, 10, 13, and 14. Grammatical changes do not alter substance.

(BICAMERAL)

ORDER OF BUSINESS NO. 5 -

FINAL CONSIDERATION

STYLE AND DRAFTING - LEGISLATIVE -

NO. III

ARTICLE ___

THE LEGISLATURE

Section 1. POWER AND STRUCTURE. The legislative power is vested in a legislature consisting of a senate and a house of representatives. The people reserve to themselves the powers of initiative and referendum.

Section 2. SIZE. The size of the legislature shall be provided by law, but the senate shall not have more than 50 or fewer than 40 members and the house shall not have more than 100 or fewer than 80 members.

Section 3. ELECTION AND TERMS. A member of the house of representatives shall be elected for a term of two years and a member of the senate for a term of four years each to begin on a date provided by law. One-half of the senators shall be elected every two years.

Section 4. QUALIFICATIONS. A candidate for the legislature shall be a resident of the state for at least one year next preceding the general election. For six months next preceding the general election, he shall be a resident of the county if it contains one or more districts or of the district if it contains all or parts of more than one county.

Section 5. COMPENSATION. (1) Each member of the legislature shall receive compensation for his services and allowances provided by law. No legislature may fix its own compensation.

(2) The legislature shall create a salary commission to recommend compensation for the judiciary and elected members of the legislative and executive departments.

Section 6. SESSIONS. The legislature shall be a continuous body for two-year periods beginning when newly elected members take office. Any business, bill, or resolution pending at adjournment of a session shall carry over with the same status to any other session of the legislature during the biennium. The

legislature shall meet at least once a year in regular session of not more than 60 legislative days. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor or at the written request of a majority of the members.

Section 7. VACANCIES. A vacancy in the legislature shall be filled by special election for the unexpired term unless otherwise provided by law.

Section 8. IMMUNITY. A member of the legislature is privileged from arrest during attendance at sessions of the legislature and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace. He shall not be questioned in any other place for any speech or debate in the legislature.

Section 9. DISQUALIFICATION. No ~~senator or representative~~ member of the legislature shall, during the term for which he shall have been elected, be appointed to any civil office under the state; and no member of congress, or other person holding an office (except notary public, or in the militia) under the United States or this state, shall be a member of ~~either house~~ the legislature during his continuance in office.

Section 10. ORGANIZATION AND PROCEDURE. (1) Each house shall judge the election and qualifications of its members. It may by law vest in the courts the power to try and determine contested elections. Each house shall choose its officers from among its members, keep a journal, and make rules for its proceedings. Each house may expel or punish a member for good cause shown with the concurrence of two-thirds of all its members.

(2) A majority of each house constitutes a quorum. A smaller number may adjourn from day to day and compel attendance of absent members.

(3) The sessions of the legislature and of the committee of the whole, all committee meetings, and all hearings shall be open to the public.

(4) The legislature may establish a legislative council and other interim committees.

(5) Neither house shall, without the consent of the other, adjourn or recess for more than three days or to any place other than that in which the two houses are sitting.

Section 11. BILLS. (1) A law shall be passed by bill which shall not be so altered or amended on its passage through the legislature as to change its original purpose. No bill shall become law except by a vote of the majority of all members present and voting.

(2) Every vote of each member of the legislature on each substantive question in the legislature, in any committee, or in committee of the whole shall be recorded and made public. On final passage, the vote shall be taken by ayes and noes and the names entered on the journal.

(3) Each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject, clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void.

(4) A general appropriation bill shall contain only appropriations for the ordinary expenses of the legislative, executive, and judicial departments, for interest on the public debt, and for public schools. Every other appropriation shall be made by a separate bill, containing but one subject.

(5) No appropriation shall be made for religious, charitable, industrial, educational, or benevolent purposes to any private individual, private association, or private corporation not under control of the state.

(6) A law may be challenged on the ground of noncompliance with this section only within two years after its effective date.

Section 12. LOCAL AND SPECIAL LEGISLATION. The legislature shall not pass a special or local act when a general act is, or can be made, applicable.

Section 13. IMPEACHMENT. (1) The governor, executive officers, heads of state departments, judicial officers, and such other officers as may be provided by law are subject to impeachment, and upon conviction shall be removed from office. Other proceedings for removal from public office for cause may be provided by law.

(2) The legislature shall provide for the manner, procedure, and causes for impeachment and may select the senate as tribunal.

(3) Impeachment shall be brought only by a two-thirds vote of the house. The tribunal hearing the charges shall convict only by a vote of two-thirds or more of its members.

(4) Conviction shall extend only to removal from office, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law.

Section 14. DISTRICTING AND APPORTIONMENT. (1) The state shall be divided into as many districts as there are members of the house, and each district shall elect one representative. Each senate district shall be composed of two adjoining house districts, and shall elect one senator. Each district shall consist

of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.

(2) In the legislative session following ratification of this Constitution and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of each house shall each designate one commissioner. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall select him.

(3) The commission shall submit its plan to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendations. Within 30 days thereafter, the commission shall file its final plan with the secretary of state and it shall become law. The commission is then dissolved.

Section 15. PROHIBITED PAYMENTS. Except for interest on the public debt, no money shall be paid out of the treasury unless upon an appropriation made by law and a warrant drawn by the proper officer in pursuance thereof.

Section 16. CODE OF ETHICS. The legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for legislators and all state and local officers and employees.

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

REPORT OF COMMITTEE ON STYLE, DRAFTING,

TRANSITION AND SUBMISSION ON

EXECUTIVE

NO. IV

Date Reported: March 4, 1972

/s/ John M. Schiltz, Chairman

/s/ William A. Buckhardt, Vice Chairman

TO: Montana Constitutional Convention

SUBJECT: EXECUTIVE

Ladies and Gentlemen:

The Committee on Style, Drafting, Transition and Submission transmits revisions of the above Article for consideration of the Convention.

Immediately following this letter you will find the above Article as revised by the Committee. Following that is the Article indicating (by underlining) words we have added and (by crossing out) words we have deleted from the Article as approved. Finally, there is an explanation of the changes we have made.

Sincerely,

/s/ John M. Schiltz
Chairman of the Committee
on Style, Drafting, Transition
and Submission

/s/ William A. Burkhardt
Vice Chairman of the Committee
on Style, Drafting, Transition
and Submission

BE IT PROPOSED BY THE EXECUTIVE COMMITTEE:

That there be a new Article on the Executive to read as follows:

ARTICLE ___

THE EXECUTIVE

Section 1. OFFICERS. (1) The executive department includes a governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, treasurer, and auditor.

(2) Each holds office for a term of four years which begins on the first Monday of January next succeeding election, and until a successor is elected and qualified.

(3) Each shall reside at the seat of government, there keep the public records of his office, and perform such other duties as are provided in this Constitution and by law.

Section 2. ELECTION. (1) The governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, treasurer, and auditor shall be elected by the qualified electors at a general election provided by law.

(2) Each candidate for governor shall file jointly with a candidate for lieutenant governor in primary elections, or so otherwise comply with nomination procedures provided by law that the offices of governor and lieutenant governor are voted upon together in primary and general elections.

Section 3. QUALIFICATIONS. (1) No person shall be eligible to the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, treasurer, or auditor unless he is 25 years of age or older at the time of his election. In addition, each shall be a citizen of the United States who has resided within the state two years next preceding his election.

(2) Any person with the foregoing qualifications is eligible to the office of attorney general if an attorney in good standing admitted to practice law in Montana who has engaged in the active practice thereof for at least five years before election.

(3) The superintendent of public instruction shall have such educational qualifications as are provided by law.

Section 4. DUTIES. (1) The executive power is vested in the

governor who shall see that the laws are faithfully executed. He shall have such other duties as are provided in this Constitution and by law.

(2) The lieutenant governor shall perform the duties provided by law and those delegated to him by the governor. No power specifically vested in the governor by this Constitution may be delegated to the lieutenant governor.

(3) The secretary of state shall maintain official records of the executive department and of the acts of the legislature, as provided by law. He shall keep the great seal of the state of Montana and perform any other duties provided by law.

(4) The attorney general is the legal officer of the state and shall have the duties and powers provided by law.

(5) The superintendent of public instruction, the treasurer, and the auditor shall have such duties as are provided by law. The legislature may appoint a legislative post-auditor who shall perform such post-auditing duties as may be provided by law.

Section 5. COMPENSATION. (1) Officers of the executive department shall receive salaries provided by law.

(2) During his term, no elected officer of the executive department may hold another public office or receive compensation for services from any other governmental agency. He may be a candidate for any public office during his term.

Section 6. VACANCY IN OFFICE. (1) If the office of lieutenant governor becomes vacant by his succession to the office of governor, or by his death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office for the remainder of the term. If both the elected governor and the elected lieutenant governor become unable to serve in the office of governor, succession to the respective offices shall be as provided by law for the period until the next general election. Then, a governor and lieutenant governor shall be elected to fill the remainder of the original term.

(2) If the office of secretary of state, attorney general, auditor, treasurer, or superintendent of public instruction becomes vacant by death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office until the next general election and until a successor is elected and qualified. The person elected to fill a vacancy shall hold the office until the expiration of the term for which his predecessor was elected.

Section 7. 20 DEPARTMENTS. All executive and administrative offices, boards, bureaus, commissions, agencies and instrumen-

talities of the executive department (except for the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, auditor, and treasurer) and their respective functions, powers, and duties, shall be allocated by law among not more than 20 principal departments so as to provide an orderly arrangement in the administrative organization of state government. Temporary commissions may be established by law and need not be allocated within a department.

Section 8. APPOINTING POWER. (1) The departments provided for in section 7 shall be under the supervision of the governor. Except as otherwise provided in this Constitution or by law, each department shall be headed by a single executive appointed by the governor subject to confirmation by the senate to hold office until the end of the governor's term unless sooner removed by the governor.

(2) The governor shall appoint, subject to confirmation by the senate, all officers provided for in this Constitution or by law whose appointment or election is not otherwise provided for. They shall hold office until the end of the governor's term unless sooner removed by the governor.

(3) If a vacancy occurs in any such office when the legislature is not in session, the governor shall appoint a qualified person to discharge the duties thereof until the office is filled by appointment and confirmation.

(4) A person not confirmed by the senate for an office shall not, except at its request, be renominated again for that office at the same session, or be appointed to that office when the legislature is not in session.

Section 9. BUDGET AND MESSAGES. The governor shall at the beginning of each legislative session, and may at other times, give the legislature information and recommend measures he considers necessary. The governor shall submit to the legislature at a time fixed by law, a budget for the ensuing fiscal period setting forth in detail for all operating funds the proposed expenditures and estimated revenue of the state.

Section 10. VETO POWER. (1) Each bill passed by the legislature, except bills proposing amendments to the Montana Constitution, bills ratifying proposed amendments to the United States Constitution, resolutions, and initiative and referendum measures, shall be submitted to the governor for his signature. If he does not sign or veto the bill within five days after its delivery to him if the legislature is in session or within 25 days if the legislature is adjourned, it shall become law. The governor shall return a vetoed bill to the legislature with a statement of his reasons therefor.

(2) The governor may return any bill to the legislature with his recommendation for amendment. If the legislature passes

the bill in accordance with the governor's recommendation, it shall again return the bill to the governor for his reconsideration. The governor shall not return a bill for amendment a second time.

(3) If after receipt of a veto message, two-thirds of the members present approve the bill, it shall become law.

(4) If the legislature is not in session when the governor vetoes a bill, he shall return the bill with his reasons therefor to the legislature as provided by law. The legislature may reconvene to reconsider any bill so vetoed.

(5) The governor may veto items in appropriation bills, and in such instances the procedure shall be the same as upon veto of an entire bill.

Section 11. PARDONS. The governor may grant reprieves, commutations and pardons, restore citizenship, and suspend and remit fines and forfeitures subject to procedures provided by law.

Section 12. MILITIA. (1) The governor is commander-in-chief of the militia forces of the state, except when they are in the actual service of the United States. He may call out any part or all of the forces to aid in the execution of the laws, suppress insurrection, repel invasion, or protect life and property in natural disasters.

(2) The militia forces shall consist of all able-bodied citizens of the state except those exempted by law.

Section 13. SUCCESSION. (1) If the governor-elect is disqualified or dies, the lieutenant governor-elect upon qualifying for the office shall become governor for the full term. If the governor-elect fails to assume office for any other reason, the lieutenant governor-elect upon qualifying as such shall serve as acting governor until the governor-elect is able to assume office, or until the office becomes vacant.

(2) The lieutenant governor shall serve as acting governor when so requested in writing by the governor. After the governor has been absent from the state for more than 45 consecutive days, the lieutenant governor shall serve as acting governor.

(3) He shall serve as acting governor when the governor is so disabled as to be unable to communicate to the lieutenant governor the fact of his inability to perform the duties of his office. The lieutenant governor shall continue to serve as acting governor until the governor is able to resume the duties of his office.

(4) Whenever, at any other time, the lieutenant governor and attorney general transmit to the legislature their written declaration that the governor is unable to discharge the powers

and duties of his office, the legislature shall convene to determine whether he is able to do so.

(5) If the legislature, within 21 days after convening, determines by two-thirds vote of its members present that the governor is unable to discharge the powers and duties of his office, the lieutenant governor shall serve as acting governor. Thereafter, when the governor transmits to the legislature his written declaration that no inability exists, he shall resume the powers and duties of his office within 15 days, unless the legislature determines otherwise by two-thirds vote of its members. If the legislature so determines, the lieutenant governor shall continue to serve as acting governor.

(6) If the office of governor becomes vacant by reason of death, resignation, or disqualification, the lieutenant governor shall become governor for the remainder of the term, except as provided in this Constitution.

(7) Additional succession to fill vacancies shall be provided by law.

(8) When there is a vacancy in the office of governor, the successor shall be the governor. The acting governor shall have the powers and duties of the office of governor only for the period during which he serves.

Section 14. INFORMATION FOR GOVERNOR. (1) The governor may require information in writing, under oath when required, from the officers of the executive department upon any subject relating to the duties of their respective offices.

(2) He may require information in writing, under oath, from all officers and managers of state institutions.

(3) He may appoint a committee to investigate and report to him upon the condition of any executive office or state institution.

BE IT PROPOSED BY THE EXECUTIVE COMMITTEE:

That there be a new Article on the Executive to read as follows:

ARTICLE ___

THE EXECUTIVE

Section 1. OFFICERS. (1) The executive department ~~shall consist of~~ includes a governor, lieutenant governor, secretary of state, attorney general, ~~and~~ superintendent of public instruction, ~~state~~ treasurer, and ~~state~~ auditor.

(2) Each ~~shall hold~~ holds ~~his~~ office for a term of four years, ~~which commencing~~ begins on the first Monday of January next succeeding ~~his~~ election, and until a successor is elected and qualified.

(3) Each shall reside at the seat of government, ~~where he shall~~ there keep the public records of his office, ~~and~~

~~(4) Each shall~~ and perform such other duties as are ~~prescribed~~ provided in this Constitution, and by law.

Section 2. ELECTION. (1) The governor, lieutenant governor, secretary of state, attorney general, ~~state treasurer, the~~ superintendent of public instruction, ~~treasurer,~~ and ~~state~~ auditor shall be elected by the qualified electors ~~of the state~~ at a general election ~~held and finally determined as~~ provided by law.

(2) Each candidate for governor shall file jointly with a candidate for lieutenant governor in primary elections, or so otherwise comply with nomination procedures, provided by law ~~so~~ that the offices of governor and lieutenant governor ~~shall be~~ are voted upon together in primary and general elections, ~~as provided by law~~.

Section 3. QUALIFICATIONS. (1) No person shall be eligible to the office of governor, lieutenant governor, secretary of state, attorney general, ~~or~~ superintendent of public instruction, treasurer, or auditor unless he ~~has attained the age of~~ is 25 years of age or older at the time of his election, ~~nor to the office of secretary of state, state auditor, or state treasurer, unless he has attained the age of 25 years~~. In addition ~~to the qualifications above prescribed~~, each ~~of the officers named~~ shall be a citizen of the United States, ~~and have~~ who has resided within the state two years next preceding his election.

(2) ~~In addition to~~ Any person with the foregoing qualifications, ~~any person to be~~ is eligible to the office of attorney

general ~~shall be~~ if an attorney in good standing admitted to practice law in ~~the state of~~ Montana, ~~and have~~ who has engaged in the active practice thereof for at least five years before election.

(3) ~~In addition to the foregoing qualification the~~ The superintendent of public instruction shall ~~possess~~ have such educational qualifications as are ~~prescribed~~ provided by law.

Section 4. DUTIES. (1) The executive power ~~of the state~~ is vested in the governor, who shall see that the laws are faithfully executed. He shall have such other duties as are ~~herein~~ provided, in this Constitution and ~~as provided~~ by law.

(2) The lieutenant governor shall perform the duties provided by law and those delegated to him by the governor, ~~and those provided for him by law, but no~~ No power specifically vested in the governor by this Constitution may be delegated to the lieutenant governor ~~in this manner~~.

(3) The secretary of state shall maintain ~~the~~ official records of the executive department and of the acts of the ~~legislative assembly~~ legislature, ~~and of the executive department~~, as provided by law. He shall keep the great seal of the state of Montana, and perform any other duties provided by law.

(4) The attorney general ~~shall be~~ is the legal officer of the state, and shall have ~~with~~ the duties and powers provided by law.

(5) The superintendent of public instruction, the ~~state~~ treasurer, and the auditor shall have such duties as are provided by law.

~~(6) The auditor shall have such duties as are provided by law. In addition to the state auditor, the~~ The legislature may appoint a ~~legislative~~ legislative ~~post~~ post-auditor who shall perform such post-auditing duties as ~~shall~~ may be ~~prescribed~~ provided by law.

~~(7) The superintendent of public instruction shall have such duties as are provided by law.~~

Section 5. COMPENSATION. (1) Officers of the executive department shall receive salaries provided by law.

(2) During his term, ~~no~~ no elected officer of the executive department may ~~during his term~~ hold ~~any other~~ another public office, or receive compensation for ~~his~~ services from any other governmental agency. He may be a candidate for any public office during his term.

Section 6. VACANCY IN OFFICE. (1) If the office of lieutenant governor becomes vacant by his succession to the office of

governor, or by his death, resignation, or disability as determined by law, the governor shall appoint a qualified person to ~~hold and~~ serve in that office for the remainder of ~~its~~ the term. If both the elected ~~Governor~~ governor, or and the elected ~~Lieutenant~~ lieutenant governor, ~~should~~ become unable to serve in the office of ~~Governor~~ governor, succession to ~~their~~ the respective offices shall be as provided by law for the period until the next general election. ~~when~~ Then, ~~both the~~ a ~~Governor~~ governor and ~~Lieutenant~~ lieutenant ~~Governor~~ governor shall be ~~again~~ elected ~~for any~~ to fill the ~~balance~~ remainder of the original term ~~remaining~~.

(2) If the office of secretary of state, attorney general, auditor, treasurer, ~~and~~ or superintendent of public instruction becomes vacant by death, resignation, or disability as determined by law, the governor shall appoint a qualified person to ~~hold and~~ serve in that office until the next general election, and until ~~his~~ a successor is elected and qualified. The person elected to fill ~~such~~ a vacancy shall hold the office until the expiration of the term for which ~~the person he succeeds~~ his predecessor was elected.

Section 7. 20 DEPARTMENTS. All executive and administrative offices, boards, bureaus, commissions, agencies, and instrumentalities of the executive department ~~of state government~~ (except for the office of governor, lieutenant governor, secretary of state, attorney general, ~~and~~ superintendent of public instruction, ~~state~~ auditor, and ~~state~~ treasurer) and their respective functions, powers, and duties, shall be allocated by law among ~~and within~~ not more than 20 principal departments. ~~Subsequently, all new powers or functions shall be assigned to departments, divisions, sections, or units in such manner~~ so as ~~will tend~~ to provide an orderly arrangement in the administrative organization of state government. Temporary commissions may be established by law and need not be allocated within a ~~principal~~ department.

Section 8. APPOINTING POWER. (1) The ~~principal~~ departments provided for in section 7 shall be under the supervision of the governor, ~~and, except~~ Except as otherwise provided in this Constitution ~~herein~~ or by law, each department shall be headed by a single executive appointed by the governor ~~and~~ subject to confirmation by the senate. ~~Such executives shall~~ to hold office until the end of the governor's term ~~of the governor,~~ unless sooner removed by the governor.

(2) The governor shall appoint, subject to confirmation by the senate, all officers provided for ~~by~~ in this Constitution or by law ~~and~~ whose appointment or election ~~or term~~ is not otherwise provided for. They shall hold office until the end of the governor's term ~~of the governor~~ unless sooner removed by the governor.

(3) If a vacancy occurs in any such office ~~occurs during a recess of~~ when the legislature is not in session, the governor

shall appoint ~~some--fit~~ a qualified person to discharge the duties thereof until ~~the--next--meeting--of--the-legislature,-when~~ the office ~~shall-be~~ is filled by appointment and confirmation.

(4) ~~No~~ A person not confirmed by the senate for an office shall not, except at its request, be nominated again for that office at the same session, or be appointed to that office ~~during a-recess-of~~ when the legislature is not in session.

Section 9. BUDGET AND MESSAGES. The governor shall at the beginning of each legislative session, and may at other times, give the legislature information and recommend measures he considers necessary. The governor shall submit to the legislature at a time fixed by law, a budget for the ensuing fiscal period setting forth in detail, for all operating funds, the proposed expenditures and estimated revenue of the state.

Section 10. VETO POWER. (1) ~~All~~ Each ~~bills~~ bill passed by the legislature, except bills proposing amendments to the Montana Constitution, bills ratifying proposed amendments to the United States Constitution, resolutions, and initiative and referendum measures, shall be submitted to the governor for his signature. ~~and-shall-become-law,-if~~ If he does not sign ~~neither-approves-nor~~ or ~~vetoes~~ veto the bill within five days after its delivery to him if the legislature is in session, or within 25 days if the legislature is adjourned, it shall become law. The governor shall return a vetoed bills to the legislature with a statement of his ~~objections~~ reasons therefor.

(2) The governor may return any bill to the legislature with his ~~objections-and-with-a~~ recommendation for ~~an~~ amendment ~~or amendments--to-it~~. If the legislature passes the bill in accordance with the governor's recommendation, it shall again return the bill to the governor for his reconsideration. The governor shall not return a bill for amendment a second time, ~~--for--amendment~~.

(3) ~~Upon~~ If after receipt of a veto message, ~~the-legislature-shall-reconsider-passage-of-the-vetoed-bill.~~ A two-thirds ~~vote~~ of the members present approve ~~override-the-veto,-and~~ the bill, it shall become law.

(4) If the legislature is not in session when the governor vetoes a bill, he shall return the bill with his ~~objections~~ reasons therefor to the legislature ~~in--a--manner--authorized~~ as provided by law. ~~The-legislature,-as-provided-in-section-11,~~ The legislature may reconvene ~~itself~~ to reconsider any bills so vetoed ~~by-the-governor~~.

(5) The governor may veto items in appropriation bills, and in such instances the procedure shall be the same as upon veto of an entire bill.

~~Section-11.--SPECIAL--SESSION.-Whenever-the-governor-convid-~~

~~are it in the public interest, he may convene the legislature. At the written request of a majority of the members, the presiding officers of both houses shall convene the legislature in special session.~~

Section ~~4211~~. PARDONS. The governor ~~shall have the power to~~ may grant reprieves, commutations and pardons ~~after conviction~~, ~~reinstate~~ restore citizenship, and ~~may~~ suspend and remit fines and forfeitures subject to procedures ~~prescribed~~ provided by law.

Section ~~4312~~. MILITIA. (1) The governor ~~shall~~ is ~~to~~ commander-in-chief of the militia forces of the state, except when ~~these forces~~ they are in the actual service of the United States. ~~and shall have the power to~~ He may call out any part ~~of~~ or ~~the whole~~ all of ~~said~~ the forces to aid in the execution of the laws, ~~to~~ suppress insurrection, ~~or to~~ repel invasion, or ~~to~~ protect life and property in natural disasters.

(2) The militia forces shall consist of all able-bodied citizens of the state except ~~such persons as are~~ those exempted by law.

Section ~~4413~~. SUCCESSION. (1) If the governor-elect is disqualified, or dies, the lieutenant governor-elect upon qualifying for the office shall become governor for the full term. If the governor-elect fails to assume office for any other reason, the lieutenant governor-elect upon qualifying as such shall serve as acting governor until the governor-elect ~~qualifies for~~ is able to assure office, or until the office becomes vacant.

(2) The lieutenant governor shall serve as acting governor when so requested in writing by the governor ~~to do so~~. ~~He shall serve as acting governor during the absence~~ After the governor has been absent from the state ~~of the governor for any period in excess of~~ for more than 45 consecutive days, the lieutenant governor shall serve as acting governor.

(3) He shall also serve as acting governor when the governor is so disabled ~~and by reason of that disability is~~ as to be unable to communicate to the lieutenant governor the fact of his inability to perform the duties of his office. The lieutenant governor ~~in such event~~ shall continue to serve as acting governor until the governor is able to ~~recuses~~ resume the duties of his office.

(4) Whenever, at any other time, the lieutenant governor and attorney general transmit to the ~~presiding officers of the~~ legislature their written declaration that the governor is unable to discharge the powers and duties of his office, the legislature shall convene to determine whether he is able to do so.

(5) If the legislature, within 21 days after convening, determines by two-thirds vote of its members present that the governor is unable to discharge the powers and duties of his

office, the lieutenant governor shall ~~enter upon and discharge the same~~ serve as acting governor~~.~~ ~~thereafter~~ Thereafter, when the governor transmits to the ~~presiding officer of the~~ legislature his written declaration that no inability exists, he shall resume the powers and duties of his office within 15 days, unless the legislature determines otherwise by two-thirds vote of its members. If the legislature so determines, the lieutenant governor shall continue to ~~discharge the powers and duties of the office~~ serve as acting governor.

(6) If the office of governor becomes vacant by reason of death, resignation, or disqualification, the lieutenant governor shall become governor for the remainder of the term, except as provided ~~herein~~ in this Constitution.

(7) Additional succession to ~~such~~ fill vacancies shall be ~~as~~ provided by law.

(8) When there is a vacancy in the office of governor, the successor shall ~~have the title, powers, duties and emoluments of that office and shall~~ be the governor. ~~When~~ The ~~successor serves as~~ acting governor ~~for a temporary period, he~~ shall have ~~only~~ the powers and duties of the office of governor only for the period during which he serves ~~as such~~.

Section ~~15~~14. INFORMATION FOR GOVERNOR. (1) The governor may require information in writing, under oath when required, from the officers of the executive department upon any subject relating to the duties of their respective offices~~, which information shall be given upon oath whenever so required~~.

(2) ~~He~~ He may ~~also~~ require information in writing, ~~at any time~~, under oath, from all officers and managers of state institutions~~, upon any subject relating to the condition, management and expenses of their respective offices and institutions, and~~

(3) He may, ~~at any time he deems it necessary~~, appoint a committee to investigate and report to him upon the condition of any executive office or state institution.

Report #4 - Executive

COMMENTS ON STYLE, FORM, AND GRAMMAR

Section 1. "Department" is the generic label adopted in report No. 12, GENERAL GOVERNMENT. There may be some minor confusion because the word is used in a different context in section 7 of this article. The GENERAL GOVERNMENT comments speak of dividing the powers of government among three "branches". Changes for brevity and clarity do not alter substance. The order in which the offices are listed in section 1 will be used in final form.

Section 2. Deletion of superfluity does not alter substance.

Section 3. Some language has been rearranged and some omitted. Omissions do not alter substance.

Section 4. The Committee on Style interprets subsection (2) as differentiating between "duties" and gubernatorial "power" which is Constitutionally vested.

Changes do not alter substance. The provision for a "legislative post-auditor" in what was subsection (6) should be moved to the Article on THE LEGISLATURE.

Section 5. (1) The Committee on Style interprets this subsection as not prohibiting either increases or decreases in salaries at any time.

(2) The changes in language are intended to make plain that the officer will be paid for the services he renders in his office.

Section 6. Changes in language do not alter substance.

Section 7. Deletion of the language beginning with "subsequently" removes a statutory provision which has been effected.

Section 8. (3) and (4) The words "is not in session" were substituted for "recess", which was ambiguous.

Section 10. (1) The changes in language avoid the seeming possibility that a bill becomes law only if it is not signed or vetoed. Opinion is divided on whether "veto power" is EXECUTIVE or LEGISLATIVE.

Section 11. The section was deleted because the matter is provided for in the last sentence of Section 6 of the LEGISLATIVE ARTICLE. All following sections have been renumbered.

Section 11. The verb "restore" was substituted for "rein-

state" before "citizenship" because it is used in R.C.M. 1947, section 94-4720.

Section 12. Changes in language do not alter substance.

Section 13. (a) The changes make plain that the lieutenant governor does not begin to act as governor until after the passage of 45 consecutive days.

(b) The words deleted from sentence 1 do not add force to the statement that "the successor shall be the governor." Sentence 2 was rewritten to produce brevity.

Section 14. Language changes do not alter substance. A title was added.

ORDER OF BUSINESS NO. 5 -

FINAL CONSIDERATION

STYLE AND DRAFTING - EXECUTIVE -

NO. IV

ARTICLE ___

THE EXECUTIVE

Section 1. OFFICERS. (1) The executive department includes a governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor.

(2) Each holds office for a term of four years which begins on the first Monday of January next succeeding election, and until a successor is elected and qualified.

(3) Each shall reside at the seat of government, there keep the public records of his office, and perform such other duties as are provided in this Constitution and by law.

Section 2. ELECTION. (1) The governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor shall be elected by the qualified electors at a general election provided by law.

(2) Each candidate for governor shall file jointly with a candidate for lieutenant governor in primary elections, or so otherwise comply with nomination procedures provided by law that the offices of governor and lieutenant governor are voted upon together in primary and general elections.

Section 3. QUALIFICATIONS. (1) No person shall be eligible to the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, or auditor unless he is 25 years of age or older at the time of his election. In addition, each shall be a citizen of the United States who has resided within the state two years next preceding his election.

(2) Any person with the foregoing qualifications is eligible to the office of attorney general if an attorney in good standing admitted to practice law in Montana who has engaged in the active practice thereof for at least five years before election.

(3) The superintendent of public instruction shall have such educational qualifications as are provided by law.

Section 4. DUTIES. (1) The executive power is vested in the governor who shall see that the laws are faithfully executed. He shall have such other duties as are provided in this Constitution and by law.

(2) The lieutenant governor shall perform the duties provided by law and those delegated to him by the governor. No power specifically vested in the governor by this Constitution may be delegated to the lieutenant governor.

(3) The secretary of state shall maintain official records of the executive department and of the acts of the legislature, as provided by law. He shall keep the great seal of the state of Montana and perform any other duties provided by law.

(4) The attorney general is the legal officer of the state and shall have the duties and powers provided by law.

(5) The superintendent of public instruction, and the auditor shall have such duties as are provided by law. The legislature may appoint a legislative post-auditor who shall perform such post-auditing duties as may be provided by law.

Section 5. COMPENSATION. (1) Officers of the executive department shall receive salaries provided by law.

(2) During his term, no elected officer of the executive department may hold another public office or receive compensation for services from any other governmental agency. He may be a candidate for any public office during his term.

Section 6. VACANCY IN OFFICE. (1) If the office of lieutenant governor becomes vacant by his succession to the office of governor, or by his death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office for the remainder of the term. If both the elected governor and the elected lieutenant governor become unable to serve in the office of governor, succession to the respective offices shall be as provided by law for the period until the next general election. Then, a governor and lieutenant governor shall be elected to fill the remainder of the original term.

(2) If the office of secretary of state, attorney general, auditor, or superintendent of public instruction becomes vacant by death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office until the next general election and until a successor is elected and qualified. The person elected to fill a vacancy shall hold the office until the expiration of the term for which his predecessor was elected.

Section 7. 20 DEPARTMENTS. All executive and administrative

offices, boards, bureaus, commissions, agencies and instrumentalities of the executive department (except for the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor,) and their respective functions, powers, and duties, shall be allocated by law among not more than 20 principal departments so as to provide an orderly arrangement in the administrative organization of state government. Temporary commissions may be established by law and need not be allocated within a department.

Section 8. APPOINTING POWER. (1) The departments provided for in section 7 shall be under the supervision of the governor. Except as otherwise provided in this Constitution or by law, each department shall be headed by a single executive appointed by the governor subject to confirmation by the senate to hold office until the end of the governor's term unless sooner removed by the governor.

(2) The governor shall appoint, subject to confirmation by the senate, all officers provided for in this Constitution or by law whose appointment or election is not otherwise provided for. They shall hold office until the end of the governor's term unless sooner removed by the governor.

(3) If a vacancy occurs in any such office when the legislature is not in session, the governor shall appoint a qualified person to discharge the duties thereof until the office is filled by appointment and confirmation.

(4) A person not confirmed by the senate for an office shall not, except at its request, be nominated again for that office at the same session, or be appointed to that office when the legislature is not in session.

Section 9. BUDGET AND MESSAGES. The governor shall at the beginning of each legislative session, and may at other times, give the legislature information and recommend measures he considers necessary. The governor shall submit to the legislature at a time fixed by law, a budget for the ensuing fiscal period setting forth in detail for all operating funds the proposed expenditures and estimated revenue of the state.

Section 10. VETO POWER. (1) Each bill passed by the legislature, except bills proposing amendments to the Montana Constitution, bills ratifying proposed amendments to the United States Constitution, resolutions, and initiative and referendum measures, shall be submitted to the governor for his signature. If he does not sign or veto the bill within five days after its delivery to him if the legislature is in session or within 25 days if the legislature is adjourned, it shall become law. The governor shall return a vetoed bill to the legislature with a statement of his reasons therefor.

(2) The governor may return any bill to the legislature

with his recommendation tcr amendment. If the legislature passes the bill in accordance with the gcverncr's recommendatior, it shall again return the bill tc the gcverncr fcr his reconsidera-tion. The gcverncr shall nct return a bill fcr amendment a second time.

(3) If after receipt of a vetc message, twc-thirds cf the members present apprcve the bill, it shall beccme law.

(4) If the legislature is nct in sessicn when the governcr vetces a bill, he shall return the bill with his reascns therefcr to the legislature as prcvided by law. The legislature may recon-vene tc reconsider any bill sc vetced.

(5) The gcverncr may vetc items in apprcpriatien bills, and in such instances the prccedure shall be the same as upcn veto of an entire bill.

Section 11. SPECIAL SESSICN. Whenever the gcverncr ccnsid-ers it in the public interest, he may ccnvene the legislature.

Section 12. PARDCNS. The gcverncr may grant reprieves, com-mutaticns and pardcns, restcre citizenship, and suspend and remit fines and forfeitures subject tc procedures prcvided by law.

Section 13. MILITIA. (1) The gcverncr is commander-in-chief of the militia fcrces of the state, except wher they are in the actual service cf the United States. He may call cut any part or all cf the fcrces to aid in the execution cf the laws, suppress insurrection, repel invasicn, cr prctect life and property in natural disasters.

(2) The militia fcrces shall ccnsist cf all able-bcdied citizens of the state except those exempted by law.

Section 14. SUCCESSICN. (1) If the governcr-elect is dis-qualified or dies, the lieutenant gcverncr-elect upon qualifying fcr the office shall become governcr fcr the full term. If the governor-elect fails tc assume office for any cther reascn, the lieutenant governor-elect upcn qualifying as such shall serve as acting governor until the governor-elect is able to assume office, cr until the cffice beccmes vacant.

(2) The lieutenant gcverncr shall serve as acting governor when sc requested in writing by the governcr. After the gcverncr has been absent frcm the state for more than 45 ccnsecutive days, the lieutenant governor shall serve as acting gcverncr.

(3) He shall serve as acting gcverncr when the gcverncr is so disabled as tc be unable tc ccmmunicate tc the lieutenant gcverncr the fact of his inability tc perform the duties cf his office. The lieutenant governor shall ccntinue to serve as acting governcr until the governcr is able tc resume the duties cf his office.

(4) Whenever, at any other time, the lieutenant governor and attorney general transmit to the legislature their written declaration that the governor is unable to discharge the powers and duties of his office, the legislature shall convene to determine whether he is able to do so.

(5) If the legislature, within 21 days after convening, determines by two-thirds vote of its members that the governor is unable to discharge the powers and duties of his office, the lieutenant governor shall serve as acting governor. Thereafter, when the governor transmits to the legislature his written declaration that no inability exists, he shall resume the powers and duties of his office within 15 days, unless the legislature determines otherwise by two-thirds vote of its members. If the legislature so determines, the lieutenant governor shall continue to serve as acting governor.

(6) If the office of governor becomes vacant by reason of death, resignation, or disqualification, the lieutenant governor shall become governor for the remainder of the term, except as provided in this Constitution.

(7) Additional succession to fill vacancies shall be provided by law.

(8) When there is a vacancy in the office of governor, the successor shall be the governor. The acting governor shall have the powers and duties of the office of governor only for the period during which he serves.

Section 15. INFORMATION FOR GOVERNOR. (1) The governor may require information in writing, under oath when required, from the officers of the executive department upon any subject relating to the duties of their respective offices.

(2) He may require information in writing, under oath, from all officers and managers of state institutions.

(3) He may appoint a committee to investigate and report to him upon the condition of any executive office or state institution.

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

REPORT OF COMMITTEE ON STYLE, DRAFTING,

TRANSITION AND SUBMISSION ON

JUDICIARY

NO. V

Date Reported: March 9, 1972

/s/John M. Schiltz, Chairman

/s/William A. Burkhardt, Vice Chairman

TO: Montana Constitutional Convention

SUBJECT: JUDICIARY

Ladies and Gentlemen:

The Committee on Style, Drafting, Transition and Submission transmits revisions of the above Article for consideration of the Convention.

Immediately following this letter you will find the above Article as revised by the Committee. Following that is the Article indicating (by underlining) words we have added and (by crossing out) words we have deleted from the Article as approved. Finally, there is an explanation of the changes we have made.

Sincerely,

/s/John M. Schiltz
Chairman of the Committee
on Style, Drafting, Transition
and Submission

/s/William A. Burkhardt
Vice Chairman of the Committee
on Style, Drafting, Transition
and Submission

BE IT PROPOSED BY THE JUDICIARY COMMITTEE:

That there be a new Article on the Judiciary to read as follows:

ARTICLE ___

THE JUDICIARY

Section 1. JUDICIAL POWER. The judicial power of the state is vested in one supreme court, district courts, justice courts, and such other courts as may be provided by law.

Section 2. SUPREME COURT JURISDICTION. (1) The supreme court has appellate jurisdiction and may issue, hear, and determine writs appropriate thereto. It has original jurisdiction to issue, hear, and determine writs of habeas corpus.

(2) It has general supervisory control over all other courts.

(3) It may make rules governing appellate procedure, practice and procedure for all other courts, admission to the bar and the conduct of its members. Rules of procedure shall be subject to disapproval by the legislature in either of the two sessions following promulgation.

(4) Supreme court process shall extend to all parts of the state.

Section 3. SUPREME COURT ORGANIZATION. (1) The supreme court consists of one chief justice and four justices, but the legislature may increase the number of justices from four to six. A majority shall join in and pronounce decisions, which must be in writing.

(2) A district judge shall be substituted for the chief justice or a justice in the event of disqualification or disability, and the opinion of the district judge sitting with the supreme court shall have the same effect as an opinion of a justice.

Section 4. DISTRICT COURT JURISDICTION. (1) The district court has original jurisdiction in all criminal cases amounting to felony and all civil matters and cases at law and in equity. It may issue all writs appropriate to its jurisdiction. It shall have the power of naturalization and such additional jurisdiction as may be delegated by the laws of the United States or the state of Montana. Its process shall extend to all parts of the state.

(2) The district court shall hear appeals from inferior

courts as trials anew unless otherwise provided by law. The legislature may provide for direct review by the district court of decisions of administrative agencies.

(3) Other courts may have jurisdiction of criminal cases not amounting to felony and such jurisdiction concurrent with that of the district court as may be provided by law.

Section 5. JUSTICES OF THE PEACE. (1) There shall be elected in each county for a term of four years at least one justice of the peace with qualifications, training, and monthly compensation provided by law. There shall be provided such facilities that they may perform their duties in dignified surroundings.

(2) Justice courts shall have such original jurisdiction as may be provided by law. They shall not have trial jurisdiction in any criminal case designated a felony except as examining courts.

(3) The legislature may provide for additional justices of the peace in each county.

Section 6. JUDICIAL DISTRICTS. (1) The legislature shall divide the state into judicial districts and provide for the number of judges in each district. Each district shall be formed of compact territory and be bounded by county lines.

(2) The legislature may change the number and boundaries of judicial districts and the number of judges in each district, but no change in boundaries or the number of districts or judges therein shall work a removal of any judge from office during the term for which he was elected or appointed.

(3) The chief justice may upon request of the district judge, assign district judges and other judges for temporary service from one district to another, and from one county to another.

Section 7. TERMS AND PAY. (1) All justices and judges shall be paid as provided by law, but salaries shall not be diminished during terms of office.

(2) Terms of office shall be eight years for supreme court justices, six years for district court judges, and as provided by law for other judges.

Section 8. SELECTION. (1) The governor shall nominate a replacement from nominees selected in the manner provided by law for any vacancy in the office of supreme court justice or district court judge. If the governor fails to nominate within thirty days after receipt of nominees, the chief justice or acting chief justice shall make the nomination. Each nomination shall be confirmed by the senate, but a nomination made while the senate is not in session shall be effective as an appointment

until the end of the next session. If the nomination is not confirmed, the office shall be vacant and another selection and nomination shall be made.

(2) If, at the first election after senate confirmation, and at the election before each succeeding term of office, any candidate other than the incumbent justice or district judge files for election to that office, the name of the incumbent shall be placed on the ballot. If there is no contest for the office, the name of the incumbent shall nevertheless be placed on the general election ballot to allow voters of the state or district to approve or reject him. If an incumbent is rejected, another selection and nomination shall be made.

(3) If an incumbent requests that his name not be placed on the ballot, there shall be an election for the office.

Section 9. QUALIFICATIONS. (1) A citizen of the United States who has resided in the state two years immediately before taking office is eligible to the office of supreme court justice or district court judge if admitted to the practice of law in Montana for at least five years prior to the date of appointment or election. Qualifications and methods of selection of judges of other courts shall be provided by law.

(2) No supreme court justice or district court judge shall solicit or receive compensation in any form whatever or account of his office, except salary and actual necessary travel expense.

(3) Except as otherwise provided in this Constitution, no supreme court justice or district court judge shall practice law during his term of office, engage in any other employment for which salary or fee is paid, or hold office in a political party.

(4) Supreme court justices shall reside within the state. Every other judge shall reside during his term of office in the district, county, township, precinct, city or town in which he is elected or appointed.

Section 10. FORFEITURE OF JUDICIAL POSITION. Any holder of a judicial position forfeits that position by either filing for an elective public office other than a judicial position or absenting himself from the state for more than 60 consecutive days.

Section 11. REMOVAL AND DISCIPLINE. (1) The legislature shall create a judicial standards commission consisting of five persons and provide for the appointment thereto of two district judges, one attorney, and two citizens who are neither judges nor attorneys.

(2) The commission shall investigate complaints, make rules implementing this section, and keep its proceedings confidential. It may subpoena witnesses and documents.

(3) Upon recommendation of the commission, the supreme court may:

(a) retire any justice or judge for disability that seriously interferes with the performance of his duties and is or may become permanent; or

(b) censure, suspend, or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform his duties, or habitual intemperance.

Section 12. EXEMPTION LAWS. The legislature shall enact liberal homestead and exemption laws.

Section 13. PERPETUITIES. No perpetuities shall be allowed except for charitable purposes.

BE IT PROPOSED BY THE JUDICIARY COMMITTEE:

That there be a new Article on the Judiciary to read as follows:

ARTICLE ___

THE JUDICIARY

Section 1. JUDICIAL POWER. The judicial power of the state is vested in ~~a~~ one supreme court, ~~and~~ district courts, justice courts, and such other courts as may be provided by law.

Section 2. SUPREME COURT ~~POWERS~~ JURISDICTION. (1) The supreme court has appellate jurisdiction, ~~including jurisdiction~~ and may ~~to~~ issue, hear, and determine writs appropriate thereto. ~~to its appellate jurisdiction; and~~ It has original jurisdiction to issue, hear, and determine writs of habeas corpus.

(2) It has general supervisory control over all other courts.

(3) It may make rules governing appellate procedure, ~~rules of~~ practice and procedure for all other courts, ~~and rules of~~ admission to the bar and the conduct of its members. Rules of procedure shall be subject to ~~approval or~~ disapproval by the legislature in either of the two sessions following ~~their~~ promulgation.

(4) Supreme court process shall extend to all parts of the state.

Section 3. SUPREME COURT ORGANIZATION. (1) The supreme court ~~shallconsist~~ consists of one chief justice and four justices, but the legislature may increase the number of justices from four to six. ~~A~~ majority ~~of whom will be necessary to~~ shall join in and pronounce ~~the decision~~ decisions, which must be in writing ~~and joined in by the majority. The legislative assembly may increase the number of justices from five to seven.~~

(2) A district ~~judges~~ judge shall be substituted for the chief justice or ~~the~~ a ~~justices~~ justice in the event of disqualification or disability, ~~in any cause,~~ and the opinion of the district judge sitting with the supreme court shall have the same effect as an opinion of a justice ~~of the supreme court~~.

Section 4. DISTRICT COURT JURISDICTION. (1) The district court has original jurisdiction in all criminal cases amounting to felony and all civil matters and cases at law and in equity. It may issue all writs appropriate to its jurisdiction. It shall have the power of naturalization and such additional jurisdiction

as may be delegated by the laws of the United States or the state of Montana. Its process shall extend to all parts of the state.

(2) The district court shall hear appeals from inferior courts as trials anew, unless otherwise provided by law. ~~(3)~~ The legislature may provide for direct review by the district court of decisions of administrative agencies.

(3) Other courts may have ~~for~~ jurisdiction of criminal cases not amounting to felony ~~if other courts~~, and ~~for concurrent~~ such jurisdiction concurrent with ~~other courts~~ that of the district court as may be provided by law.

~~Appeals from inferior courts must be tried anew in the district court. The supreme court and district court process shall extend to all parts of the state.~~

Section ~~165~~. JUSTICES OF THE PEACE ~~--ELECTION-----QUALIFICATIONS----COMPENSATION--JURISDICTION~~. (1) There shall be elected in each county for a term of four years at least one justice of the peace with qualifications, training, and monthly compensation ~~as~~ provided by law, ~~who shall hold office for the term of four years~~. There shall be provided such facilities ~~for such~~ that they ~~justices so that~~ may perform their duties ~~may be performed~~ in dignified surroundings.

(2) Justice courts shall have such original jurisdiction ~~within their respective counties~~ as may be ~~prescribed~~ provided by law. They shall not have trial jurisdiction in any criminal case designated a felony, except as examining courts.

(3) The legislature may provide for additional justices of the peace in each county ~~or other types of courts below the district court level as is deemed necessary~~.

Section ~~56~~. JUDICIAL DISTRICTS. (1) The ~~legislative assembly~~ legislature shall divide the state into judicial districts and provide for the number of judges in each district. Each district shall be formed of compact territory and be bounded by county lines.

(2) ~~The legislative assembly shall have the power to~~ The legislature may change the number and boundaries of judicial districts ~~and their boundaries~~ and the number of judges in each district; ~~however, each district shall be formed of compact territory and be bounded by county lines,~~ but no ~~changes~~ change in boundaries or the number of districts or judges therein, shall work a removal of any judge from office during the term for which he ~~has been~~ was elected or appointed.

(3) The chief justice may, upon request of the district judge, assign ~~the~~ district ~~judge~~ judges and other judges for temporary service from one district to another, and from one county to another.

Section ~~6~~7. TERMS AND PAY ~~OF JUDGES~~. (1) All justices ~~of the supreme court, district court judges~~ and ~~other~~ judges shall be paid as provided by law, but ~~their salary~~ salaries shall not be diminished during ~~their term~~ terms of office.

(2) Terms of office ~~for supreme court justices~~ shall be eight years~~.~~ for supreme court justices, six years

~~Terms of office~~ for district court judges~~,~~ ~~shall be six years~~ and as provided by law

~~Terms of office~~ for other judges ~~shall be provided by law~~.

Section ~~7~~8. SELECTION ~~OF JUDGES~~. (1) The governor shall nominate a replacement from nominees selected in the manner provided by law ~~in all vacancies~~ for any vacancy in the offices of supreme court justices ~~and~~ or district court judges~~, the governor of the state shall nominate a supreme court or district court judge from nominees selected in the manner provided by law~~. If the governor fails to nominate within thirty days after receipt of ~~the names of the~~ nominees, the chief justice or acting chief justice shall make the nomination. Each nomination shall be confirmed by the senate, but a nomination made while the senate is not ~~assembled~~ in session shall be effective as an appointment until the end of the next session ~~of the senate~~. If the nomination is not confirmed, ~~by the senate~~ the office shall be vacant and another selection and nomination shall be made.

(2) ~~Before the close of filings for nomination in the first primary election after senate confirmation, and at the primary election prior to each succeeding term of office, the name of the incumbent judge shall be placed on a contested ballot if other candidates have filed for election to that office.~~ If, at the first election after senate confirmation, and at the election before each succeeding term of office, any candidate other than the incumbent justice or district judge files for election to that office, the name of the incumbent shall be placed on the ballot. If there is no ~~primary election~~ contest for the office, the name of the incumbent ~~judge~~ shall nevertheless be placed on ~~a ballot in~~ the general election ballot to allowing voters of the state or district ~~the choice of his approval or rejection~~ to approve or reject him. ~~In the event of rejection of~~ If a an ~~judge~~ incumbent is rejected, another selection and nomination shall be made ~~in like manner~~.

(3) If an incumbent ~~judge does not run~~ requests that his name not be placed on the ballot, there shall be ~~a~~ an ~~contested~~ election for the office.

Section ~~8~~9. QUALIFICATIONS ~~AND LIMITATIONS OF JUDGES~~. (1) ~~No person shall be~~ A citizen of the United States who has resided in the state two years immediately before taking office is eligible to the ~~offices~~ office of supreme court justice ~~of the~~

~~supreme court~~ or district court judge ~~of the district court unless he or she shall have been~~ if admitted to the practice of law in Montana for at least five years prior to the date of appointment or election~~, is a citizen of the United States, and has resided in the state of Montana two years immediately before taking office~~. Qualifications and methods of selection of judges of other courts shall be provided by law.

(2) No supreme court justice or district court judge shall solicit or receive ~~any~~ compensation in any form whatever on account of his office~~, in any form whatever~~, except salary and actual necessary travel expense ~~as provided by law~~.

(3) Except as otherwise provided in this Constitution, no supreme court justice or district court judge shall practice law during his term of office, engage in any other employment for which salary or fee is paid, or hold office in a political party.

~~Filing for another elective public office results in forfeiture of judicial position but a judge may file for another judicial position without forfeiture of the judicial position he holds.~~

(4) ~~All judges, except~~ Supreme court justices ~~of the supreme court, who~~ shall reside within the state~~.~~ Every other judge shall ~~respectively~~ reside during ~~their~~ his term of office in the district, county, township, precinct, city or town in which ~~they may be~~ he is elected or appointed.

~~Any judicial officer who may absent himself from the state for more than 60 consecutive days shall be deemed to have forfeited his office.~~

Section 10. FORFEITURE OF JUDICIAL POSITION. Any holder of a judicial position forfeits that position by either filing for an elective public office other than a judicial position or absenting himself from the state for more than 60 consecutive days.

Section 9~~11~~. REMOVAL AND DISCIPLINE ~~of JUDGES~~. (1) The legislature shall create a judicial standards commission consisting of five persons and provide for the appointment thereto of two district judges, one attorney, and two citizens who ~~is~~ are neither a judges nor ~~an~~ attorneys.

(2) ~~The commission shall investigate complaints, subpoena witnesses and documents, and makes rules implementing this section and providing for confidentiality of proceedings.~~ The commission shall investigate complaints, make rules implementing this section, and keep its proceedings confidential. It may subpoena witnesses and documents.

(3) Upon recommendation of the commission, the supreme court may:

(a) Retire any justice or judge for disability that seriously interferes with the performance of his duties and is or may become permanent; or

(b) Censure, suspend, or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform his duties, or habitual intemperance.

Section ~~11~~12. EXEMPTION LAWS. The ~~legislative---assembly~~ legislature shall enact liberal homestead and exemption laws.

Section ~~12~~13. PERPETUITIES. No perpetuities shall be allowed, except for charitable purposes.

REPORT NO. V - JUDICIARY

COMMENTS ON STYLE, FORM, AND GRAMMAR

Section 1. The cardinal number "one" was substituted for the indefinite article "a" to provide harmony with the similar provision in the United States Constitution. The addition of what is now section 5 required addition of "justice courts."

Section 2. Subsections were added and language deleted to aid clarity without altering substance. Subsection (3): Deleting "approval or" expresses the intent of floor debate. Subsection (4) was moved from section 4.

Section 3. (1) Numbers in the first sentence were changed to express intent. Reorganization and deletion do not alter substance.

Section 4. The first clause of subsection (3) was moved to become the second sentence of subsection (2). The first sentence of the last paragraph, which was not part of the Committee of the whole amendment, conflicts with subsection (2), so it was deleted. The reference to process in the second sentence was moved.

Section 5. was added in Committee of the whole as section 10. The language deleted at the end repeats part of section 1. The other changes in language do not alter substance.

Section 6. The addition of the words "of the district judge" to subsection (3) clarifies the source of the request. Changes in language and order do not alter substance.

Section 7. Deletion and reorganizing achieve brevity and clarity without altering substance. The phrase "other judges" in subsection (2) is understood by the Committee to include, among others, "magistrates" and "justices of the peace."

Section 8. Subsection (2) was redrafted to clarify meaning. In addition, references to "primary election" were deleted to avoid perpetuating the primary mode of selection in the Constitution. The underlined addition to subsection (3) was substituted for "does not run" to reconcile its provisions with subsection (2). Removing the adjective "contested" avoids a requirement that more than one candidate file.

Section 9. The phrase "as provided by law" was deleted from subsection (2) because it contains a prohibition which is not to be affected by any law but the Constitution. Other extensive language and order changes do not alter substance. Two sentences concerning forfeiture were combined in the next new section 10.

Section 11. Subsection (2) was redrafted to differentiate

the requirements laid upon the commission and its discretionary power to subpoena. Other changes in the section clarify.

Sections 12 and 13. These sections will be moved to other Articles when the entire Constitution is proposed.

ORDER OF BUSINESS NO. 5 -

FINAL CONSIDERATION

STYLE AND DRAFTING

- JUDICIARY - NO. V

ARTICLE ___

THE JUDICIARY

Section 1. JUDICIAL POWER. The judicial power of the state is vested in one supreme court, district courts, justice courts, and such other courts as may be provided by law.

Section 2. SUPREME COURT JURISDICTION. (1) The supreme court has appellate jurisdiction and may issue, hear, and determine writs appropriate thereto. It has original jurisdiction to issue, hear, and determine writs of habeas corpus and such other writs as may be provided by law.

(2) It has general supervisory control over all other courts.

(3) It may make rules governing appellate procedure, practice and procedure for all other courts, admission to the bar and the conduct of its members. Rules of procedure shall be subject to disapproval by the legislature in either of the two sessions following promulgation.

(4) Supreme court process shall extend to all parts of the state.

Section 3. SUPREME COURT ORGANIZATION. (1) The supreme court consists of one chief justice and four justices, but the legislature may increase the number of justices from four to six. A majority shall join in and pronounce decisions, which must be in writing.

(2) A district judge shall be substituted for the chief justice or a justice in the event of disqualification or disability, and the opinion of the district judge sitting with the supreme court shall have the same effect as an opinion of a justice.

Section 4. DISTRICT COURT JURISDICTION. (1) The district court has original jurisdiction in all criminal cases amounting to felony and all civil matters and cases at law and in equity. It may issue all writs appropriate to its jurisdiction. It shall have the power of naturalization and such additional jurisdiction

as may be delegated by the laws of the United States or the state of Montana. Its process shall extend to all parts of the state.

(2) The district court shall hear appeals from inferior courts as trials anew unless otherwise provided by law. The legislature may provide for direct review by the district court of decisions of administrative agencies.

(3) Other courts may have jurisdiction of criminal cases not amounting to felony and such jurisdiction concurrent with that of the district court as may be provided by law.

Section 5. JUSTICES OF THE PEACE. (1) There shall be elected in each county at least one justice of the peace with qualifications, training, and monthly compensation provided by law. There shall be provided such facilities that they may perform their duties in dignified surroundings.

(2) Justice courts shall have such original jurisdiction as may be provided by law. They shall not have trial jurisdiction in any criminal case designated a felony except as examining courts.

(3) The legislature may provide for additional justices of the peace in each county.

Section 6. JUDICIAL DISTRICTS. (1) The legislature shall divide the state into judicial districts and provide for the number of judges in each district. Each district shall be formed of compact territory and be bounded by county lines.

(2) The legislature may change the number and boundaries of judicial districts and the number of judges in each district, but no change in boundaries or the number of districts or judges therein shall work a removal of any judge from office during the term for which he was elected or appointed.

(3) The chief justice may upon request of the district judge, assign district judges and other judges for temporary service from one district to another, and from one county to another.

Section 7. TERMS AND PAY. (1) All justices and judges shall be paid as provided by law, but salaries shall not be diminished during terms of office.

(2) Terms of office shall be eight years for supreme court justices, six years for district court judges, four years for justices of the peace, and as provided by law for other judges.

Section 8. SELECTION. (1) The governor shall nominate a replacement from nominees selected in the manner provided by law for any vacancy in the office of supreme court justice or district court judge. If the governor fails to nominate within thirty days after receipt of nominees, the chief justice or act-

ing chief justice shall make the nomination. Each nomination shall be confirmed by the senate, but a nomination made while the senate is not in session shall be effective as an appointment until the end of the next session. If the nomination is not confirmed, the office shall be vacant and another selection and nomination shall be made.

(2) If, at the first election after senate confirmation, and at the election before each succeeding term of office, any candidate other than the incumbent justice or district judge files for election to that office, the name of the incumbent shall be placed on the ballot. If there is no election contest for the office, the name of the incumbent shall nevertheless be placed on the general election ballot to allow voters of the state or district to approve or reject him. If an incumbent is rejected, another selection and nomination shall be made.

(3) If an incumbent does not run, there shall be an election for the office.

Section 9. QUALIFICATIONS. (1) A citizen of the United States who has resided in the state two years immediately before taking office is eligible to the office of supreme court justice or district court judge if admitted to the practice of law in Montana for at least five years prior to the date of appointment or election. Qualifications and methods of selection of judges of other courts shall be provided by law.

(2) No supreme court justice or district court judge shall solicit or receive compensation in any form whatever on account of his office, except salary and actual necessary travel expense.

(3) Except as otherwise provided in this Constitution, no supreme court justice or district court judge shall practice law during his term of office, engage in any other employment for which salary or fee is paid, or hold office in a political party.

(4) Supreme court justices shall reside within the state. Every other judge shall reside during his term of office in the district, county, township, precinct, city or town in which he is elected or appointed.

Section 10. FORFEITURE OF JUDICIAL POSITION. Any holder of a judicial position forfeits that position by either filing for an elective public office other than a judicial position or absenting himself from the state for more than 60 consecutive days.

Section 11. REMOVAL AND DISCIPLINE. (1) The legislature shall create a judicial standards commission consisting of five persons and provide for the appointment thereto of two district judges, one attorney, and two citizens who are neither judges nor attorneys.

(2) The commission shall investigate complaints, make rules implementing this section, and keep its proceedings confidential. It may subpoena witnesses and documents.

(3) Upon recommendation of the commission, the supreme court may:

(a) retire any justice or judge for disability that seriously interferes with the performance of his duties and is or may become permanent; or

(b) censure, suspend, or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform his duties, or habitual intemperance.

Section 12. EXEMPTION LAWS. The legislature shall enact liberal homestead and exemption laws.

Section 13. PERPETUITIES. No perpetuities shall be allowed except for charitable purposes.

Section 14. CAMPAIGN EXPENSES. The ~~legislative assembly~~ legislature shall appropriate funds for the contested general election campaign expenses of candidates for the offices of chief justice and justices of the supreme court and shall enact laws regulating the amount, expenditure, and disposition thereof. No candidate for chief justice or justice of the supreme court, ~~nor~~ or any person or persons acting on his ~~or her~~ behalf, shall expend money in a campaign for the office in excess of the amount appropriated and authorized by the ~~legislative assembly~~ legislature.

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

REPORT OF COMMITTEE ON STYLE, DRAFTING,

TRANSITION AND SUBMISSION ON

NATURAL RESOURCES AND AGRICULTURE

No. VI

Date Reported: March 10, 1972

/s/ John M. Schiltz, Chairman

/s/ William A. Burkhardt, Vice Chairman

TO: Montana Constitutional Convention

SUBJECT: NATURAL RESOURCES AND AGRICULTURE

Ladies and Gentlemen:

The Committee on Style, Drafting, Transition and Submission transmits revisions of the above Article for consideration of the Convention.

Immediately following this letter you will find the above Article as revised by the Committee. Following that is the Article indicating (by underlining) words we have added and (by crossing out) words we have deleted from the Article as approved. Finally, there is an explanation of the changes we have made.

Sincerely,

/s/ John M. Schiltz
Chairman of the Committee
on Style, Drafting, Transition
and Submission

/s/ William A. Burkhardt
Vice Chairman of the Committee
on Style, Drafting, Transition
and Submission

BE IT PROPOSED BY THE NATURAL RESOURCES AND AGRICULTURE COMMITTEE:

That there be a new Article on the Environment and Agriculture to read as follows:

ARTICLE ___

ENVIRONMENT AND NATURAL RESOURCES

Section 1. PROTECTION AND IMPROVEMENT. (1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.

(2) The legislature shall provide for the administration and enforcement of this duty.

(3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

Section 2. RECLAMATION. All lands disturbed by the taking of natural resources shall be reclaimed. The legislature shall provide effective requirements and standards for the reclamation.

Section 3. WATER RIGHTS. (1) All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed.

(2) The use of all water that is now or may hereafter be appropriated for sale, rent, distribution, or other beneficial use, the right of way over the lands of others for all ditches, drains, flumes, canals, and aqueducts necessarily used in connection therewith, and the sites for reservoirs necessary for collecting and storing water shall be held to be a public use.

(3) All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.

(4) The legislature shall provide for the administration, control, and regulation of water rights and shall establish a system of centralized records, in addition to the present system of local records.

Section 4. CULTURAL RESOURCES. The legislature shall provide for the identification, acquisition, restoration, enhancement, preservation, and administration of scenic, historic, archeologic, scientific, cultural, and recreational areas, sites,

records and objects, and for their use and enjoyment by the people.

BE IT PROPOSED BY THE NATURAL RESOURCES AND AGRICULTURE COMMITTEE:

That there be a new Article on the Environment and Agriculture to read as follows:

ARTICLE ___

ENVIRONMENT AND NATURAL RESOURCES

Section 1. PROTECTION AND ~~ENHANCEMENT~~ IMPROVEMENT. (1) The ~~State~~ state ~~of Montana~~ and each person ~~must~~ shall maintain and improve a clean and healthful ~~the Montana~~ environment in Montana for present and future generations.

(2) The legislature ~~must~~ shall provide for the administration and enforcement of this duty.

(3) The legislature ~~is directed to~~ shall provide adequate remedies for the protection of the environmental life support system from degradation and ~~to~~ provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

Section 2. RECLAMATION. All lands disturbed by the taking of natural resources ~~must~~ shall be reclaimed. The legislature shall provide effective requirements and standards for the reclamation ~~of lands disturbed by the taking of natural resources~~.

Section 3. WATER RIGHTS. (1) All existing rights to the use of any waters ~~in this state~~ for any useful or beneficial purpose are hereby recognized and confirmed.

(2) The use of all water that is now or may hereafter be appropriated~~, or that may hereafter be appropriated~~ for sale, ~~rental~~ rent, distribution, or other beneficial use, ~~and~~ the right of way over the lands of others, for all ditches, drains, flumes, canals, and aqueducts, necessarily used in connection therewith, ~~as well as~~ and the sites for reservoirs necessary for collecting and storing ~~the same~~, water shall be held to be a public use.

(3) All surface, underground, flood, and atmospheric waters within the boundaries of the state ~~of Montana~~ are ~~declared to be~~ the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.

(4) The legislature shall provide for the administration, control, and regulation of water rights and shall establish a system of centralized records, in addition to the present system of local ~~filing of~~ records.

Section 4. CULTURAL RESOURCES. The legislature ~~must~~ shall

provide for the identification, acquisition, restoration, enhancement, preservation, and administration of scenic, historic, archeologic, scientific, cultural, and recreational areas, sites, records and objects, and for their use and enjoyment by the people.

Report No. VI - ENVIRONMENT AND NATURAL RESOURCES

COMMENTS ON STYLE, FORM, AND GRAMMAR

Section 1. (1) The Committee added "a" before "clean and healthful", and deleted "the Montana" before environment and added "in Montana" thereafter, in order to preserve what was recalled to be the sense of amendments adopted in Committee of the Whole. Other changes in the section do not alter substance.

Section 2. Deletion of repetition at the end of the second sentence does not alter substance.

Section 3. Reordering and deletion of language do not alter substance. It should be noted, however, that the substantive committee comments appended to subsection (2) were that section 15, Article III, of the present Constitution were duplicated verbatim "to preserve the substantial number of court decisions interpreting and incorporating the language".

BE IT PROPOSED BY THE NATURAL RESOURCES AND AGRICULTURE COMMITTEE:

That there be a new Article on Agriculture to read as follows:

ARTICLE ___

AGRICULTURE

Section 1. DEPARTMENT OF AGRICULTURE. There is a Department of Agriculture. The legislature shall enact laws and provide appropriations to protect, enhance, and develop all agriculture.

Section 2. SPECIAL LEVIES. Special levies may be made on livestock and on agricultural commodities for disease control and indemnification, predator control, and livestock and commodity inspection, protection, research, and promotion. Revenue derived shall be used solely for the purposes of the levies.

BE IT PROPOSED BY THE NATURAL RESOURCES AND AGRICULTURE COMMITTEE:

That there be a new Article on Agriculture to read as follows:

ARTICLE ___

AGRICULTURE

Section 1. DEPARTMENT OF AGRICULTURE. ~~The---legislative assembly--must--provide-for~~ There is a Department of Agriculture, ~~and~~ The legislature shall enact laws and provide appropriations to protect, enhance, and develop all agriculture ~~of-the-state~~.

Section 2. ~~RIGHT--TO~~ SPECIAL LEVIES. ~~A-special~~ Special ~~levy~~ levies may be made on livestock and on agricultural commodities for ~~the-purpose-of~~ disease control and indemnification, predator control, and livestock ~~inspection~~ and ~~protection,--agricultural~~ commodity inspection, ~~and~~ protection, ~~livestock-and-agricultural commodity~~ research, and promotion. Revenue derived ~~from--such levies~~ shall be used solely for the purposes of the ~~levied~~ levies.

Report No. VI - AGRICULTURE

COMMENTS ON STYLE, FORM, AND GRAMMAR

Section 1. The first sentence has been changed to accord with usually accepted drafting rules. Neither that change nor those in the second sentence alter substance.

Section 2. The singular noun which is the subject of the sentence was made plural to accord with reality and the usage in the title and the second sentence.

ORDER OF BUSINESS NO. 5 - FINAL CONSIDERATION

STYLE & DRAFTING - ENVIRONMENT & NATURAL RESOURCES -

NO. VI

ARTICLE ___

ENVIRONMENT AND NATURAL RESOURCES

Section 1. PROTECTION AND IMPROVEMENT. (1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.

(2) The legislature shall provide for the administration and enforcement of this duty.

(3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

Section 2. RECLAMATION. All lands disturbed by the taking of natural resources shall be reclaimed. The legislature shall provide effective requirements and standards for the reclamation of lands disturbed.

Section 3. WATER RIGHTS. (1) All existing rights to the use of any waters for an useful or beneficial purpose are hereby recognized and confirmed.

(2) The use of all water that is now or may hereafter be appropriated for sale, rent, distribution, or other beneficial use, the right of way over the lands of others for all ditches, drains, flumes, canals, and aqueducts necessarily used in connection therewith, and the sites for reservoirs necessary for collecting and storing water shall be held to be a public use.

(3) All surfaced, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.

(4) The legislature shall provide for the administration, control, and regulation of water rights and shall establish a system of centralized records, in addition to the present system of local records.

Section 4. CULTURAL RESOURCES. The legislature shall provide for the identification, acquisition, restoration, enhancement, preservation, and administration of scenic, historic,

archeologic, scientific, cultural, and recreational areas, sites, records and objects, and for their use and enjoyment by the people.

ORDER OF BUSINESS NO. 5 - FINAL CONSIDERATION

STYLE & DRAFTING - AGRICULTURE - NO. VI

ARTICLE ___

AGRICULTURE

Section 1. DEPARTMENT OF AGRICULTURE. The legislature shall provide for a Department of Agriculture and enact laws and provide appropriations to protect, enhance and develop all agriculture.

Section 2. SPECIAL LEVIES. Special levies may be made on livestock and on agricultural commodities for disease control and indemnification, predator control, and livestock and commodity inspection, protection, research, and promotion. Revenue derived shall be used solely for the purposes of the levies.

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

REPORT OF COMMITTEE ON STYLE, DRAFTING, TRANSITION AND SUBMISSION ON REVENUE AND FINANCE

No. VII

Date Reported: March 11, 1972

/s/ John M. Schiltz, Chairman

/s/ William A. Burkhardt, Vice Chairman

TO: Montana Constitutional Convention

SUBJECT: REVENUE AND FINANCE

Ladies and Gentlemen:

The Committee on Style, Drafting, Transition and Submission transmits revisions of the above Article for consideration of the Convention.

Immediately following this letter you will find the above Article as revised by the Committee. Following that is the Article indicating (by underlining) words we have added and (by crossing out) words we have deleted from the Article as approved. Finally, there is an explanation of the changes we have made.

Sincerely,

/s/ John M. Schiltz
Chairman of the Committee
on Style, Drafting, Transition
and Submission

/s/ William A. Burkhardt
Vice Chairman of Committee
on Style, Drafting, Transition
and Submission

BE IT PROPOSED BY THE REVENUE AND FINANCE COMMITTEE:

That there be a new Article on Revenue and Finance to read as follows:

ARTICLE ___

REVENUE AND FINANCE

Section 1. TAX PURPOSES. Taxes shall be levied by general laws for public purposes.

Section 2. TAX POWER INALIENABLE. The power to tax shall never be surrendered, suspended, or contracted away.

Section 3. PROPERTY TAX ADMINISTRATION. The state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law.

Section 4. EQUAL VALUATION. All taxing jurisdictions shall use the assessed valuation of property established by the state.

Section 5. PROPERTY TAX EXEMPTIONS. (1) The legislature may exempt from taxation:

(a) Property of the United States, the state, counties, cities, towns, school districts, municipal corporations, and public libraries, but any private interest in such property may be taxed separately.

(b) Institutions of purely public charity, hospitals and places of burial not used or held for private or corporate profit, places for actual religious worship, and property used exclusively for educational purposes.

(c) Any other classes of property.

(2) The legislature may authorize creation of special improvement districts for capital improvements and the maintenance thereof. It may authorize the assessment of charges for such improvements and maintenance against tax exempt property directly benefited thereby.

Section 6. HIGHWAY REVENUE NON-DIVERSION. (1) Revenue from gross vehicle weight fees and excise and license taxes (except general sales and use taxes) on gasoline, fuel, and other energy sources used to propel vehicles on public highways shall be used, after deduction of statutory refunds and adjustments, solely for:

(a) Payment of obligations incurred for construction, reconstruction, repair, operation, and maintenance of public

highways, streets, roads, and bridges.

(b) Payment of county, city, and town obligations on streets, roads, and bridges.

(c) Enforcement of highway safety, driver education, tourist promotion, and administrative collection costs authorized by the legislature.

(2) Such revenue may be appropriated for other purposes by a three-fifths vote of the members of each house of the legislature or by initiated measure approved by a majority of the qualified electors.

Section 7. TAX APPEALS. The legislature shall provide independent appeal procedures for taxpayer grievances about appraisals, assessments, equalization, and taxes. The legislature shall include a review procedure at the local government unit level.

Section 8. STATE DEBT. No state debt shall be created unless authorized by a two-thirds vote of the members of each house of the legislature or a majority of the electors voting thereon. No state debt shall be created to cover deficits incurred because appropriations exceeded anticipated revenue.

Section 9. BALANCED BUDGET. Appropriations by the legislature shall not exceed anticipated revenue.

Section 10. LOCAL GOVERNMENT DEBT. The legislature shall by law limit debts of counties, cities, towns, and all other local governmental entities.

Section 11. USE OF LOAN PROCEEDS. All money borrowed by or on behalf of the state or any county, city, town, or other local governmental entity shall be used only for purposes specified in the authorizing law.

Section 12. STRICT ACCOUNTABILITY. The legislature shall by law insure strict accountability of all revenue received and money spent by the state and counties, cities, towns, and all other local governmental entities.

Section 13. INVESTMENT OF PUBLIC FUNDS. The legislature shall provide for a unified investment program for public funds and provide rules therefor, including supervision of investment of surplus funds of all counties, cities, towns, and other local governmental entities. Each fund forming a part of the unified investment program shall be separately identified. Except for monies contributed to retirement funds, no public funds shall be invested in private corporate capital stock. The investment program shall be audited at least annually and a report thereof submitted to the governor and legislature.

BE IT PROPOSED BY THE REVENUE AND FINANCE COMMITTEE:

That there by a new Article on Revenue and Finance to read as follows:

ARTICLE ___

REVENUE AND FINANCE

Section 1. ~~PUBLIC~~ TAX ~~PURPOSE~~ PURPOSES. Taxes shall be levied by general laws for public purposes.

Section 2. ~~SURRENDER--CLAUSE~~ TAX POWER INALIENABLE. The power ~~of taxation~~ to tax shall never be surrendered, suspended, or contracted away.

Section 3. PROPERTY TAX ADMINISTRATION. The state shall appraise, assess, and equalize the valuation of all ~~Property~~ property which is to be taxed ~~shall be appraised, assessed and equalized by the state~~ in the manner ~~prescribed~~ provided by law.

Section 4. EQUAL VALUATION. All taxing jurisdictions shall use ~~the~~ the assessed valuation of property ~~to be taxed in any taxing jurisdiction shall be the same valuation as the valuation~~ established by the ~~for~~ state ~~and county purposes~~.

Section 5. PROPERTY TAX EXEMPTIONS. (1) The legislature may exempt from taxation:

(a) ~~property~~ Property of the United States, the state, counties, cities, towns, school districts, municipal corporations, and public libraries ~~may be exempt from taxation~~, but any private interest in such property may be taxed separately.

(b) ~~Property used exclusively for educational purposes, places for actual religious worship, hospitals and places of burial not used or held for private or corporate profit, institutions of purely public charity, may be exempt from taxation.~~ Institutions of purely public charity, hospitals and places of burial not used or held for private or corporate profit, places for actual religious worship, and property used exclusively for educational purposes.

(c) Any other ~~Certain~~ classes of property ~~may be exempt from taxation~~.

(2) The ~~legislative Assembly~~ legislature may authorize creation of special improvement districts for capital improvements and the maintenance thereof. ~~of capital improvements and~~ It may authorize the assessment of charges ~~therefor~~ for such improvements and maintenance against tax exempt property directly bene-

fited thereby.

Section 6. ~~HIGHWAY--EARMARK~~ HIGHWAY REVENUE NON-DIVERSION. ~~Revenue, except fees, general sales and use taxes, fees, excise and license taxation on gasoline, fuel and other energy receipts derived as a result of the propulsion of vehicles on public highways, and gross vehicle weight fees, shall be used solely for the payment of obligations incurred for construction, reconstruction, repair, operation, and maintenance of public highways, streets, roads and bridges and for county, city and town obligations on streets, roads and bridges, after the deduction of funds for tax statutory refunds and adjustments, enforcement of highway safety, driver education, tourist promotion and for administrative and collection costs as authorized by the legislative assembly. By a three-fifths vote of the members of each house of the legislative assembly or by initiated measure approved by a majority of the electorate, such dedicated funds may be appropriated for other purposes.~~ (1) Revenue from gross vehicle weight fees and excise and license taxes (except general sales and use taxes) or gasoline, fuel, and other energy sources used to propel vehicles on public highways shall be used, after deduction of statutory refunds and adjustments, solely for:

(a) Payment of obligations incurred for construction, reconstruction, repair, operation, and maintenance of public highways, streets, roads, and bridges.

(b) Payment of county, city, and town obligations on streets, roads, and bridges.

(c) Enforcement of highway safety, driver education, tourist promotion, and administrative collection costs authorized by the legislature.

(2) Such revenue may be appropriated for other purposes by a three-fifths vote of the members of each house of the legislature or by initiated measure approved by a majority of the qualified electors.

Section 7. TAX APPEALS. The legislature shall provide ~~taxpayer~~ independent appeal procedures for taxpayer grievances about appraisals, assessments, ~~and~~ equalization, ~~grievances~~ and ~~tax~~ taxes ~~grievances~~. The ~~legislature~~ legislature shall include ~~therein~~ a review procedure at the ~~county or~~ local ~~governmental~~ government unit level.

Section 8. STATE ~~INDEBTEDNESS~~ DEBT. No state debt shall be created unless authorized by a two-thirds vote of the members of each house of the ~~legislative Assembly,~~ legislature or ~~unless authorized by~~ a majority of the electors voting thereon. No ~~State~~ state debt ~~cannot~~ shall be created to cover deficits incurred ~~when~~ because appropriations ~~exceed~~ exceeded anticipated revenue ~~during any budget period~~.

Section 9. BALANCED BUDGET. Appropriations by the ~~legislative Assembly~~ legislature shall not exceed anticipated ~~revenues~~ revenue ~~during any budget period~~.

Section 10. LOCAL GOVERNMENT ~~INDEBTEDNESS~~ DEBT. The ~~legislative Assembly~~ legislature shall ~~enact by law~~ limit ~~of indebtedness~~ debts for ~~subdivisions and districts of the state~~ counties, cities, towns, and all other local governmental entities.

Section 11. USE OF LOAN PROCEEDS. All money borrowed by or on behalf of the state, or any ~~subdivision or district of the state~~ county, city, town, or other local governmental entity shall be used only for ~~the purpose or~~ purposes specified in the ~~law~~ authorizing law ~~the loan~~.

Section 12. STRICT ACCOUNTABILITY. The ~~legislative Assembly~~ legislature shall ~~enact the necessary~~ by ~~laws~~ law to insure strict accountability of all ~~revenues~~ revenue received and money spent by the state ~~subdivisions~~ and ~~districts thereof~~ counties, cities, towns, and all other local governmental entities.

Section 13. INVESTMENT OF PUBLIC FUNDS. The ~~legislative Assembly~~ legislature shall provide for a unified investment program for public funds and ~~prescribe~~ provide ~~the~~ rules ~~and regulations~~ therefor, including ~~the~~ supervision of investment of surplus funds of all ~~subdivisions and districts of the state~~ counties, cities, towns, and other local governmental entities. ~~The separate existence and identity of each~~ Each ~~and every~~ fund ~~involved as~~ forming a part of the unified investment program shall be ~~strictly maintained~~ separately identified. ~~With the exception of~~ Except for monies contributed to retirement funds, no public funds shall be invested in private corporate capital stock. ~~An audit of~~ The investment program shall be conducted audited at least annually and a report thereof submitted to the ~~Governor~~ governor and ~~legislative Assembly~~ legislature.

REPORT NO. VII - REVENUE AND FINANCE

COMMENTS ON STYLE, FORM, AND GRAMMAR

Section 2. A much more descriptive title was substituted for one which was misleading.

Section 3. Rewriting the sentence avoids the error of asserting that "property...shall be...equalized."

Section 4. Rewriting serves brevity and clarity and creates consistency with the principle of state assessment established in Section 3.

Section 5. Reorganization achieves clarity without changing substance. (As a matter of substance, it should be noted that the state has no power to tax property of the United States, absent its permission.)

Section 6. A new title was substituted for one which suffered the twin deficiencies of smacking of the vernacular and misleading. Reorganization achieves clarity without changing substance.

Section 7. Rewriting makes plain that people -- not things -- have grievances.

Sections 8 and 9. Changes serve brevity and clarity without altering substance.

Sections 10, 11, 12, 13. Consultation with the substantive committee revealed that the phrase "subdivisions and districts of the state" did not express that committee's intention. The definition of "local government units" proposed in section 1 of report No. XI from the LOCAL GOVERNMENT COMMITTEE is not adequate. Research showed that the words "local", "governmental", and "entity" have been legally applied and construed. Accordingly, the Committee on Style adopted, as expressive of the intention of the substantive committee, the phrase "counties, cities, towns, and all other local governmental entities." That phrase (modified to suit the context) is substituted in each of these sections for the phrase "subdivisions and districts of the state."

ORDER OF BUSINESS NO. 5 - FINAL CONSIDERATION

STYLE & DRAFTING - REVENUE & FINANCE - NO. VII

ARTICLE ___

REVENUE AND FINANCE

Section 1. TAX PURPOSES. Taxes shall be levied by general laws for public purposes.

Section 2. TAX POWER INALIENABLE. The power to tax shall never be surrendered, suspended, or contracted away.

Section 3. PROPERTY TAX ADMINISTRATION. The state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law.

Section 4. EQUAL VALUATION. All taxing jurisdictions shall use the assessed valuation of property established by the state.

Section 5. PROPERTY TAX EXEMPTIONS. (1) The legislature may exempt from taxation:

(a) Property of the United States, the state, counties, cities, towns, school districts, municipal corporations, and public libraries, but any private interest in such property may be taxed separately.

(b) Institutions of purely public charity, hospitals and places of burial not used or held for private or corporate profit, places for actual religious worship, and property used exclusively for educational purposes.

(c) Any other classes of property.

(2) The legislature may authorize creation of special improvement districts for capital improvements and the maintenance thereof. It may authorize the assessment of charges for such improvements and maintenance against tax exempt property directly benefited thereby.

Section 6. HIGHWAY REVENUE NON-DIVERSION. (1) Revenue from gross vehicle weight fees and excise and license taxes (except general sales and use taxes) on gasoline, fuel, and other energy sources used to propel vehicles on public highways shall be used as authorized by the legislature, after deduction of statutory refunds and adjustments, solely for:

(a) Payment of obligations incurred for construction, reconstruction, repair, operation, and maintenance of public

highways, streets, roads, and bridges.

(b) Payment of county, city, and town obligations on streets, roads, and bridges.

(c) Enforcement of highway safety, driver education, tourist promotion, and administrative collection costs.

(2) Such revenue may be appropriated for other purposes by a three-fifths vote of the members of each house of the legislature or by initiated measure approved by a majority of the qualified electors.

Section 7. TAX APPEALS. The legislature shall provide independent appeal procedures for taxpayer grievances about appraisals, assessments, equalization, and taxes. The legislature shall include a review procedure at the local government unit level.

Section 8. STATE DEBT. No state debt shall be created unless authorized by a two-thirds vote of the members of each house of the legislature or a majority of the electors voting thereon. No state debt shall be created to cover deficits incurred because appropriations exceeded anticipated revenue.

Section 9. BALANCED BUDGET. Appropriations by the legislature shall not exceed anticipated revenue.

Section 10. LOCAL GOVERNMENT DEBT. The legislature shall by law limit debts of counties, cities, towns, and all other local governmental entities.

Section 11. USE OF LOAN PROCEEDS. All money borrowed by or on behalf of the state or any county, city, town, or other local governmental entity shall be used only for purposes specified in the authorizing law.

Section 12. STRICT ACCOUNTABILITY. The legislature shall by law insure strict accountability of all revenue received and money spent by the state and counties, cities, towns, and all other local governmental entities.

Section 13. INVESTMENT OF PUBLIC FUNDS. (1) The legislature shall provide for a unified investment program for public funds and provide rules therefor, including supervision of investment of surplus funds of all counties, cities, towns, and other local governmental entities. Each fund forming a part of the unified investment program shall be separately identified. Except for monies contributed to retirement funds, no public funds shall be invested in private corporate capital stock. The investment program shall be audited at least annually and a report thereof submitted to the governor and legislature.

(2) The public school fund shall forever remain inviolate, ~~and~~ guaranteed by the state against loss or diversion ~~by the~~

~~state~~. The public school fund and the permanent funds of the ~~state~~ Montana university system and ~~of~~ all other state institutions of learning, shall be safely and conservatively invested in:

(a) ~~public~~ Public securities of the state, its subdivisions, local government units, and districts within the state, or

(b) ~~bonds~~ Bonds of the United States, or ~~in~~ other securities fully guaranteed as to principal and interest by the United States, or

(c) Such other ~~such~~ safe investments bearing a fixed rate of interest, as may be ~~prescribed~~ provided by law.

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

REPORT OF COMMITTEE ON STYLE, DRAFTING,

TRANSITION AND SUBMISSION ON

BILL OF RIGHTS

NO. VIII

Date Reported: March 13, 1972

/s/ John M. Schiltz, Chairman

/s/ William A. Buckhardt, Vice Chairman

TO: Montana Constitutional Convention

SUBJECT: BILL OF RIGHTS

Ladies and Gentlemen:

The Committee on Style, Drafting, Transition and Submission transmits revisions of the above Article for consideration of the Convention.

Immediately following this letter you will find the above Article as revised by the Committee. Following that is the Article indicating (by underlining) words we have added and (by crossing out) words we have deleted from the Article as approved. Finally, there is an explanation of the changes we have made.

Sincerely,

/s/ John M. Schiltz
Chairman of the Committee
on Style, Drafting, Transition
and Submission

/s/ William A. Burkhardt
Vice Chairman of the Committee
on Style, Drafting, Transition
and Submission

BE IT PROPOSED BY THE BILL OF RIGHTS COMMITTEE:

That there be a new Article on the Bill of Rights to read as follows:

PREAMBLE

We the people of Montana grateful to God for the quiet beauty of our state, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life, equality of opportunity and to secure the blessings of liberty for this and future generations do ordain and establish this Constitution.

ARTICLE ___

DECLARATION OF RIGHTS

Section 1. POPULAR SOVEREIGNTY. All political power is vested in and derived from the people. All government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole.

Section 2. SELF-GOVERNMENT. The people have the exclusive right of governing themselves as a free, sovereign, and independent state. They may alter or abolish the Constitution and form of government whenever they deem it necessary.

Section 3. INALIANABLE RIGHTS. All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.

Section 4. INDIVIDUAL DIGNITY. The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

Section 5. FREEDOM OF RELIGION. The state shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

Section 6. FREEDOM OF ASSEMBLY. The people shall have the right to assemble peaceably in order to petition for redress of grievances or protest governmental action.

Section 7. FREEDOM OF SPEECH, EXPRESSION, AND PRESS. No law shall be passed impairing the freedom of speech or expression. Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty. In all suits and prosecutions for libel or slander the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts.

Section 8. RIGHT OF PARTICIPATION. The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

Section 9. RIGHT TO KNOW. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

Section 10. RIGHT OF PRIVACY. The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

Section 11. SEARCHES AND SEIZURES. The people shall be secure in their persons, papers, homes and effects from unreasonable searches and seizures. No warrant to search any place, or seize any person or thing shall issue without describing the place to be searched or the person or thing to be seized, or without probable cause, supported by oath or affirmation reduced to writing.

Section 12. RIGHT TO BEAR ARMS. The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.

Section 13. RIGHT OF SUFFRAGE. All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

Section 14. ADULT RIGHTS. A person 18 years of age or older is an adult for all purposes.

Section 15. RIGHTS OF PERSONS NOT ADULTS. The rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this article unless specifically precluded by laws which enhance the protection of such persons.

Section 16. THE ADMINISTRATION CF JUSTICE. Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character. No person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation Laws of this state. Right and justice shall be administered without sale, denial, or delay.

Section 17. DUE PROCESS OF LAW. No person shall be deprived of life, liberty, or property without due process of law.

Section 18. STATE SUBJECT TO SUIT. The state, counties, cities, towns, and all other local governmental entities shall have no immunity from suit for injury to a person or property. This provision shall apply only to causes of action arising after July 1, 1973.

Section 19. HABEAS CORPUS. The privilege of the writ of habeas corpus shall never be suspended.

Section 20. INITIATION OF PROCEEDINGS. (1) Criminal offenses within the jurisdiction of any court inferior to the district court shall be prosecuted by complaint. All criminal actions in district court, except those on appeal, shall be prosecuted either by information, after examination and commitment by a magistrate or after leave granted by the court, or by indictment without such examination, commitment, or leave.

(2) A grand jury shall consist of eleven persons, of whom eight must concur to find an indictment. A grand jury shall be drawn and summoned only at the discretion and order of the district judge.

Section 21. BAIL. All persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great.

Section 22. EXCESSIVE SANCTIONS. Excessive bail shall not be required, or excessive fines imposed, or cruel and unusual punishments inflicted.

Section 23. DETENTION. No person shall be imprisoned for the purpose of securing his testimony in any criminal proceeding longer than may be necessary in order to take his deposition. If he can give security for his appearance at the time of trial, he shall be discharged upon giving the same; if he cannot give security, his deposition shall be taken in the manner provided by law, and in the presence of the accused and his counsel, or without their presence, if they shall fail to attend the examination after reasonable notice of the time and place thereof. Any deposition authorized by this section may be received as evidence on

the trial, if the witness shall be dead or absent from the state.

Section 24. RIGHTS OF THE ACCUSED. In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right of the state to have a change of venue for any of the causes for which the defendant may obtain the same.

Section 25. SELF-INCRIMINATION AND DOUBLE JEOPARDY. No person shall be compelled to testify against himself in a criminal proceeding. No person shall be again put in jeopardy for the same offense previously tried in any jurisdiction.

Section 26. TRIAL BY JURY. The right of trial by jury is secured to all and shall remain inviolate. But upon default of appearance or by consent of the parties expressed in such manner as the law may provide, all cases may be tried without a jury or before fewer than the number of jurors provided by law. In all civil actions, two-thirds of the jury may render a verdict, and a verdict so rendered shall have the same force and effect as if all had concurred therein. In all criminal actions, the verdict shall be unanimous.

Section 27. IMPRISONMENT FOR DEBT. No person shall be imprisoned for debt except in the manner provided by law, upon refusal to deliver up his estate for the benefit of his creditors, or in cases of tort, where there is strong presumption of fraud.

Section 28. RIGHTS OF THE CONVICTED. Laws for the punishment of crime shall be founded on the principles of prevention and reformation. Termination of state supervision for any offense against the state shall restore all civil and political rights.

Section 29. EMINENT DOMAIN. Private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made to or paid into court for the owner. In the event of litigation, just compensation shall include necessary expenses of litigation to be awarded by the court when the private property owner prevails.

Section 30. TREASON AND DESCENT OF ESTATES. Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court; no person shall be attainted of treason or felony by the legislature; no conviction shall cause the loss of property to the relatives or heirs of the convicted. The estates of suicides shall descend or vest as in cases of natural death.

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Section 32. CIVILIAN CONTROL OF THE MILITARY. The military shall always be in strict subordination to the civil power; no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in the manner provided by law.

Section 33. IMPORTATION OF ARMED PERSONS. No armed person or persons or armed body of men shall be brought into this state for the preservation of the peace, or the suppression of domestic violence, except upon the application of the legislature, or of the governor when the legislature cannot be convened.

Section 34. UNENUMERATED RIGHTS. The enumeration in this Constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

Section 35. SERVICEMEN, SERVICEWOMEN, AND VETERANS. The people declare that Montana servicemen, servicewomen, and veterans may be given special considerations determined by the legislature.

BE IT PROPOSED BY THE BILL OF RIGHTS COMMITTEE:

That there be a new Article on the Bill of Rights to read as follows:

PREAMBLE

We the people of Montana grateful to God for the quiet beauty of our state, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life, equality of opportunity and to secure the blessings of liberty for this and future generations do ordain and establish this Constitution.

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REPORT NO. VIII - BILL OF RIGHTS

COMMENTS ON STYLE, FORM, AND GRAMMAR

Introduction: The Committee on Style, sensitive to the point made by the substantive committee's comments that some "political philosophy provisions are not often immediately justiciable," has stayed its editorial hand.

Section 1. Punctuation changes serve clarity and do not alter substance.

Section 2. Deleting "of the state" from the first sentence avoids repetition. Changing the third person plural possessive pronoun "their" to the definite article makes plain the function of a Constitution is to constitute the organic law of the state rather than to establish a possessory relationship between the people and the instrument.

Section 3. Structural changes serve clarity without altering substance.

Section 4. The word "law" was made plural to agree with the parent 14th Amendment. Alteration of the form, but not the substance, of the second sentence makes the prohibition crystal clear. Countless court decisions make plain that a prohibition directed against the "state" includes all its arms, including "agencies or subdivisions".

Section 6. Words were added to clarify the intention of the substantive committee expressed in its comment to this section. As rewritten, the section makes plain that it protects one right - "to assemble peaceably" - for two purposes: (1) to petition for redress of grievances or (2) to protest governmental action.

Section 8. Adding "such" and "may be" does not alter substance. The additions were necessitated by the floor amendment having been appended.

Section 11. Slight changes clarify without altering substance.

Section 14. The form was changed to consist with drafting standards.

Section 15. The title and content were changed to accord with the substance of section 14.

Section 18. The substituted phrase is the same as that adopted for the same purpose in the Article on REVENUE AND TAXATION. The second sentence should be moved to the adoption schedule. (Suggestion for title: SOVEREIGN IMMUNITY IS DEAD! LONG LIVE

THE KING!)

Section 20. Changes in form do not alter substance.

Sections 21, 22, 23, and 24. "Once burned, twice shy". The substantive committee comments to each section read that the committee voted unanimously to retain the old section unchanged. So....

Section 25. Changes remove redundancy.

Section 26. Rewriting for clarity does not alter substance.

Section 27. "The committee voted unanimously to retain former Article III, Section 12 uncharged".

Section 28. Rewriting makes plain that it is the act of termination of state supervision which restores "all civil and political rights." That phrase from the substantive committee comments specifies "full rights." The proposal: "Death shall not be prescribed as a penalty for any crime against the state." will be placed on the ballot, as directed by the Convention.

Sections 30, 31, 32, 33, 34. The substantive committee voted unanimously to preserve these provisions unchanged.

ORDER OF BUSINESS NO. 5 -

FINAL CONSIDERATION STYLE AND DRAFTING -

BILL OF RIGHTS - NO. VIII

PREAMBLE

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Section 13. RIGHT OF SUFFRAGE. All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

Section 14. ADULT RIGHTS. A person 18 years of age or older is an adult for all purposes.

Section 15. RIGHTS OF PERSONS NOT ADULTS. The rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this article unless specifi-

cally precluded by laws which enhance the protection of such persons.

Section 16. THE ADMINISTRATION OF JUSTICE. Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character. No person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation Laws of this state. Right and justice shall be administered without sale, denial, or delay.

Section 17. DUE PROCESS OF LAW. No person shall be deprived of life, liberty, or property without due process of law.

Section 18. STATE SUBJECT TO SUIT. The state, counties, cities, towns, and all other local governmental entities shall have no immunity from suit for injury to a person or property. This provision shall apply only to causes of action arising after July 1, 1973.

Section 19. HABEAS CORPUS. The privilege of the writ of habeas corpus shall never be suspended.

Section 20. INITIATION OF PROCEEDINGS. (1) Criminal offenses within the jurisdiction of any court inferior to the district court shall be prosecuted by complaint. All criminal actions in district court, except those on appeal, shall be prosecuted either by information, after examination and commitment by a magistrate or after leave granted by the court, or by indictment without such examination, commitment or leave.

(2) A grand jury shall consist of eleven persons, of whom eight must concur to find an indictment. A grand jury shall be drawn and summoned only at the discretion and order of the district judge.

Section 21. BAIL. All persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great.

Section 22. EXCESSIVE SANCTIONS. Excessive bail shall not be required, or excessive fines imposed, or cruel and unusual punishments inflicted.

Section 23. DETENTION. No person shall be imprisoned for the purpose of securing his testimony in any criminal proceeding longer than may be necessary in order to take his deposition. If he can give security for his appearance at the time of trial, he shall be discharged upon giving the same; if he cannot give security, his deposition shall be taken in the manner provided by law, and in the presence of the accused and his counsel, or without their presence, if they shall fail to attend the examination

after reasonable notice of the time and place thereof.

Section 24. RIGHTS OF THE ACCUSED. In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right of the state to have a change of venue for any or the causes for which the defendant may obtain the same.

Section 25. SELF-INCRIMINATION AND DOUBLE JEOPARDY. No person shall be compelled to testify against himself in a criminal proceeding. No person shall be again put in jeopardy for the same offense previously tried in any jurisdiction.

Section 26. TRIAL BY JURY. The right of trial by jury is secured to all and shall remain inviolate. But upon default of appearance or by consent of the parties expressed in such manner as the law may provide, all cases may be tried without a jury or before fewer than the number of jurors provided by law. In all civil actions, two-thirds of the jury may render a verdict, and a verdict so rendered shall have the same force and effect as if all had concurred therein. In all criminal actions, the verdict shall be unanimous.

Section 27. IMPRISONMENT FOR DEBT. No person shall be imprisoned for debt except in the manner provided by law, upon refusal to deliver up his estate for the benefit of his creditors, or in cases of tort, where there is strong presumption of fraud.

Section 28. RIGHTS OF THE CONVICTED. Laws for the punishment of crime shall be founded on the principles of prevention and reformation. Full rights are restored by termination of state supervision for any offense against the state.

Section 29. EMINENT DOMAIN. Private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made to or paid into court for the owner. In the event of litigation, just compensation shall include necessary expenses of litigation to be awarded by the court when the private property owner prevails.

Section 30. TREASON AND DESCENT OF ESTATES. Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court; no person shall be attainted of treason or felony by the legislature; no conviction shall cause the loss of property to the relatives or heirs of the convicted. The estates of suicides shall descend or vest as in cases of natural death.

Section 31. EX POST FACTO, OBLIGATION OF CONTRACTS, AND IRREVOCABLE PRIVILEGES. No ex post facto law nor any law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislature.

Section 32. CIVILIAN CONTROL OF THE MILITARY. The military shall always be in strict subordination to the civil power; no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in the manner provided by law.

Section 33. IMPORTATION OF ARMED PERSONS. No armed person or persons or armed body of men shall be brought into this state for the preservation of the peace, or the suppression of domestic violence, except upon the application of the legislature, or of the governor when the legislature cannot be convened.

Section 34. UNENUMERATED RIGHTS. The enumeration in this Constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

Section 35. SERVICEMEN, SERVICEWOMEN, AND VETERANS. The people declare that Montana servicemen, servicewomen, and veterans may be given special considerations determined by the legislature.

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

REPORT OF COMMITTEE ON STYLE, DRAFTING,

TRANSITION AND SUBMISSION ON

PUBLIC HEALTH, WELFARE,

LABOR AND INDUSTRY

No. IX

Date Reported: March 17, 1972

/s/ John M. Schiltz, Chairman

/s/ William A. Burkhardt, Vice Chairman

TO: Montana Constitutional Convention

SUBJECT: PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY

Ladies and Gentlemen:

The Committee on Style, Drafting, Transition and Submission transmits revisions of the above Article for consideration of the Convention.

Immediately following this letter you will find the above Article as revised by the Committee. Following that is the Article indicating (by underlining) words we have added and (by crossing out) words we have deleted from the Article as approved. Finally, there is an explanation of the changes we have made.

Sincerely,

/s/ John M. Schiltz
Chairman of the Committee
on Style, Drafting, Transition
and Submission

/s/ William A. Burkhardt
Vice Chairman of the Committee
on Style, Drafting, Transition
and Submission

BE IT PROPOSED BY THE PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY COMMITTEE:

That there be a new Article on Non-municipal Corporations to read as follows:

ARTICLE ___

NON-MUNICIPAL CORPORATIONS

Section 1. LIMITATION OF POWER. Corporate charters shall be granted, modified, or dissolved only pursuant to general law.

Section 2. PROTECTION FOR CITIZENRY. The legislature shall provide protection and education for the people against harmful and unfair practices by either foreign or domestic corporations, individuals, or associations.

Section 3. RETROSPECTIVE LAW PROHIBITION. The legislature shall pass no law retrospective in its operations which imposes on the people a new liability in respect to transactions or considerations already passed.

BE IT PROPOSED BY THE PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY COMMITTEE:

That there be a new Article on Labor to read as follows:

ARTICLE ___

LABOR

Section 1. DEPARTMENT AND COMMISSIONER. The legislature shall provide for a Department of Labor and Industry, headed by a Commissioner appointed by the governor and confirmed by the senate.

Section 2. EIGHT-HOUR DAY. A maximum period of 8 hours is a regular day's work in all industries and employment except agriculture and stock raising. The legislature may change this maximum period to promote the general welfare.

BE IT PROPOSED BY THE PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY COMMITTEE:

That there be a new Article on Institutions and Assistance to read as follows:

ARTICLE ___

INSTITUTIONS AND ASSISTANCE

Section 1. INSTITUTIONS. The state shall establish and support institutions and facilities as the public good may require, including homes which may be necessary and desirable for the care of veterans.

Section 2. RESTORATION OF RIGHTS. Persons committed to any such institutions shall retain all rights except those necessarily suspended as a condition of commitment. Suspended rights shall be restored upon termination of the state's responsibility.

Section 3. ASSISTANCE. The legislature shall provide such economic assistance and social and rehabilitative services as may be necessary for those inhabitants who, by reason of age, infirmities, or misfortune may have need for the aid of society.

BE IT PROPOSED BY THE PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY COMMITTEE:

That there be a new Article on Regulation of Public Utilities to read as follows:

ARTICLE ___

REGULATION OF PUBLIC UTILITIES

Section 6. CONSUMER COUNSEL. The legislature shall provide for an office of consumer counsel which shall have the duty of representing consumer interests in hearings before the public service commission or any other successor agency. The legislature shall provide for the funding of the office of consumer counsel by a special tax on the net income or gross revenues of regulated companies.

BE IT PROPOSED BY THE PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY COMMITTEE:

That there be a new Article on Non-municipal Corporations to read as follows:

ARTICLE ___

NON-MUNICIPAL CORPORATIONS

Section 1. ~~GRANT~~ LIMITATION OF POWER. Corporate charters shall be granted, modified, or dissolved only pursuant to general law.

Section 2. PROTECTION FOR CITIZENRY. The ~~legislative assembly~~ legislature shall provide ~~for~~ protection and education for the people against harmful and unfair practices by either foreign or domestic corporations, individuals, or associations.

Section ~~6~~3. RETROSPECTIVE LAW PROHIBITION. The ~~legislative assembly~~ legislature shall pass no law retrospective in its operations which imposes on the people a new liability in respect to transactions or considerations already passed.

BE IT PROPOSED BY THE PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY COMMITTEE:

That there be a new Article on Labor to read as follows:

ARTICLE ___

LABOR

Section 1. DEPARTMENT AND COMMISSIONER. The ~~legislative Assembly~~ legislature shall provide for a Department of Labor and Industry. ~~The Department shall be under the control of~~ headed by a Commissioner appointed by the ~~Governor~~ governor, and confirmed by the ~~legislature (Senate)~~ senate.

Section ~~3~~2. EIGHT-HOUR DAY. A maximum period of 8 hours ~~shall constitute~~ is a regular day's work in all industries and employment except ~~in~~ agriculture and stock raising. The ~~legislatur~~ legislature may, ~~however,~~ change this maximum period ~~whenever in its opinion the change will better~~ to promote the general welfare.

BE IT PROPOSED BY THE PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY COMMITTEE:

That there be a new Article on Institutions and Assistance to read as follows:

ARTICLE ___

INSTITUTIONS AND ASSISTANCE

Section 1. INSTITUTIONS. The state shall establish and support ~~such~~ institutions and facilities as the public good may require, including homes which may be necessary and desirable for the care of veterans~~, as the public good may require, shall be established and supported by the state as may be prescribed by law~~.

Section ~~1~~2. RESTORATION OF RIGHTS. Persons committed to any such institutions shall retain all rights except those necessarily suspended as a condition of commitment. ~~All rights necessarily suspended~~ Suspended rights shall be restored upon termination of the ~~State's~~ state's responsibility.

Section ~~2~~3. ASSISTANCE. ~~It shall be the duty of the~~ The ~~legislative assembly to~~ legislature shall provide such economic assistance and social and rehabilitative services as may be necessary for those inhabitants who, by reason of age, infirmities, or misfortune may have need for the aid of society.

BE IT PROPOSED BY THE PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY COMMITTEE:

That there be a new Article on Regulation of Public Utilities to read as follows:

ARTICLE ___

REGULATION OF PUBLIC UTILITIES

Section 6. CONSUMER COUNSEL. The legislature shall provide ~~by--law~~ for an office of consumer counsel which shall have the duty of representing consumer interests in hearings before the public service commission or any other successor agency. The legislature shall provide ~~by-law~~ for the funding of the office of consumer counsel by a special tax on the net income or gross revenues of regulated companies.

PUBLIC HEALTH, WELFARE, LABOR AND INDUSTRY -

Report No. 9

COMMENTS ON STYLE, FORM AND GRAMMAR

NON-MUNICIPAL CORPORATIONS

Section 63. The number was changed.

LABOR

Section 1. The words "headed by" were substituted for "under the control of" to produce consistency with section 8 (1) of the EXECUTIVE Article. The transition schedule will provide for substituting the word "legislature" for "senate" if the voters approve a unicameral.

Section 32. The number was changed. Other changes serve brevity, but do not alter substance.

INSTITUTIONS AND ASSISTANCE

Sections 1 and 3. Substitution of the active for the passive form of the verb does not alter substance. The phrase "as may be prescribed by law" was deleted as redundant.

Sections 2 and 3. The order was reversed so that the phrase "such institutions" in what was originally section 3 would follow immediately after the section containing the antecedent of "such."

ORDER OF BUSINESS - NO. 5 - FINAL CONSIDERATION

STYLE & DRAFTING - PUBLIC HEALTH, WELFARE,

LABOR AND INDUSTRY

NO. IX

ARTICLE

NON-MUNICIPAL CORPORATIONS

Section 1. LIMITATION OF POWER. Corporate charters shall be granted, modified, or dissolved only pursuant to general law.

Section 2. PROTECTION FOR CITIZENRY. The legislature shall provide protection and education for the people against harmful and unfair practices by either foreign or domestic corporations, individuals, or associations.

Section 3. RETROSPECTIVE LAW PROHIBITION. The legislature shall pass no law retrospective in its operations which imposes on the people a new liability in respect to transactions or considerations already passed.

ORDER OF BUSINESS - NO. 5 - FINAL CONSIDERATION

STYLE & DRAFTING - PUBLIC HEALTH, WELFARE,

LABOR AND INDUSTRY

NO. IX

ARTICLE

LABOR

Section 1. DEPARTMENT AND COMMISSIONER. The legislature shall provide for a Department of Labor and Industry, headed by a Commissioner appointed by the governor and confirmed by the senate.

Section 2. EIGHT-HOUR DAY. A maximum period of 8 hours is a regular day's work in all industries and employment except agriculture and stock raising. The legislature may change this maximum period to promote the general welfare.

ORDER OF BUSINESS - NO. 5 - FINAL CONSIDERATION

STYLE & DRAFTING - PUBLIC HEALTH, WELFARE,

LABOR AND INDUSTRY

NO. IX

ARTICLE

INSTITUTIONS AND ASSISTANCE

Section 1. INSTITUTIONS. The state shall establish and support institutions and facilities as the public good may require, including homes which may be necessary and desirable for the care of veterans.

Section 2. RESTORATION OF RIGHTS. Persons committed to any such institutions shall retain all rights except those necessarily suspended as a condition of commitment. Suspended rights are restored upon termination of the state's responsibility.

Section 3. ASSISTANCE. The legislature shall provide such economic assistance and social and rehabilitative services as may be necessary for those inhabitants who, by reason of age, infirmities, or misfortune may have need for the aid of society.

ORDER OF BUSINESS - NO. 5 - FINAL CONSIDERATION

STYLE & DRAFTING - PUBLIC HEALTH, WELFARE,

LABOR AND INDUSTRY

NO. IX

ARTICLE

PUBLIC UTILITIES

CONSUMER COUNSEL. The legislature shall provide for an office of consumer counsel which shall have the duty of representing consumer interests in hearings before the public service commission or any other successor agency. The legislature shall provide for the funding of the office of consumer counsel by a special tax on the net income or gross revenues of regulated companies.

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

REPORT OF COMMITTEE ON STYLE, DRAFTING, TRANSITION

AND SUBMISSION ON

EDUCATION AND PUBLIC LANDS

NO. X

Date Reported: March 15, 1972

/s/ John M. Schiltz, Chairman

/s/ William F. Burkhardt, Vice Chairman

TO: Montana Constitutional Convention

SUBJECT: EDUCATION AND PUBLIC LANDS

Ladies and Gentlemen:

The Committee on Style, Drafting, Transition and Submission transmits revisions of the above Article for consideration of the Convention.

Immediately following this letter you will find the above Article as revised by the Committee. Following that is the Article indicating (by underlining) words we have added and (by crossing out) words we have deleted from the Article as approved. Finally, there is an explanation of the changes we have made.

Sincerely,

/s/ John M. Schiltz
Chairman of the Committee
on Style, Drafting, Transition
and Submission

/s/ William A. Burkhardt
Vice Chairman of the Committee
on Style, Drafting, Transition
and Submission

BE IT PROPOSED BY THE EDUCATION AND PUBLIC LANDS COMMITTEE:

That there be a new Article on Education to read as follows:

ARTICLE ___

EDUCATION

Section 1. EDUCATIONAL GOALS AND DUTIES. It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.

(2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.

(3) The legislature shall provide a basic system of quality free public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system.

Section 2. PUBLIC SCHOOL FUND. The public school fund of the state shall consist of:

(1) Proceeds from the school lands which have been or may hereafter be granted by the United States;

(2) lands granted in lieu thereof;

(3) lands given or granted by any person or corporation under any law or grant of the United States;

(4) all other grants of land or money made from the United States for general educational purposes or no other special purpose;

(5) all interests in estates that escheat to the state;

(6) all unclaimed shares and dividends of any corporation incorporated in the state;

(7) all other grants, gifts, devises or bequests made to the state for general educational purposes.

Section 3. PUBLIC SCHOOL FUND INVIOLATE. The public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion.

Section 4. BOARD OF LAND COMMISSIONERS. The governor, superintendent of public instruction, auditor, secretary of state, and attorney general constitute the board of land commissioners. It has the direction, control, leasing, exchange, and sale of the school lands and lands which have been or may be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be provided by law.

Section 5. PUBLIC SCHOOL FUND REVENUE. (1) Ninety-five percent of all the interest received on the public school fund and ninety-five percent of all rent received from the leasing of school lands and all other income from the public school fund shall be equitably apportioned annually to public elementary and secondary school districts as provided by law.

(2) The remaining five percent of all interest received on the public school fund, and the remaining five percent of all rent received from the leasing of school lands and all other income from the public school fund shall annually be added to the public fund and become and forever remain an inseparable and inviolable part thereof.

Section 6. AID PROHIBITED TO SECTARIAN SCHOOLS. (1) The legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination.

(2) This section shall not apply to funds from federal sources provided to the state for the express purpose of distribution to non-public education.

Section 7. NON-DISCRIMINATION IN EDUCATION. No religious or partisan test or qualification shall be required of any teacher or student as a condition of admission into any public educational institution. Attendance shall not be required at any religious service. No sectarian tenets shall be advocated in any public educational institution of the state. No person shall be refused admission to any public educational institution on account of sex, race, creed, religion, political beliefs, or national origin.

Section 8. SCHOOL DISTRICT TRUSTEES. The supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law.

Section 9. BOARDS OF EDUCATION. (1) There is a state board of education composed of the board of regents of higher education and the board of public education. It is responsible

for long-range planning, and for coordinating and evaluating policies and programs for the state's educational systems. It shall submit unified budget requests. A tie vote at any meeting may be broken by the governor, who is an ex officio member of each component board.

(2) (a) The government and control of the Montana university system is vested in a board of regents of higher education which shall have full power, responsibility, and authority to supervise, coordinate, manage and control the Montana university system and shall supervise and coordinate other public educational institutions assigned by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms, as provided by law. The governor and superintendent of public instruction are ex officio non-voting members of the board.

(c) The board shall appoint a commissioner of higher education and prescribe his term and duties.

(d) The funds and appropriations under the control of the board of regents are subject to the same audit provisions as are all other state funds.

(3) (a) There is a board of public education to exercise general supervision over the public school system and such other public educational institutions as may be assigned by law. Other duties of the board shall be provided by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms as provided by law. The governor, commissioner of higher education and state superintendent of public instruction shall be ex officio non-voting members of the board.

Section 10. STATE UNIVERSITY FUNDS. The funds of the Montana university system and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be provided by law, and shall be guaranteed by the state against loss or diversion. The interest from such invested funds, together with the rent from leased lands or properties, shall be devoted to the maintenance and perpetuation of the respective institutions.

BE IT RECOGNIZED BY THE EDUCATION AND PUBLIC LANDS COMMITTEE:

That there be a new Article on Education to read as follows:

ARTICLE ___

EDUCATION

Section 1. EDUCATIONAL GOALS AND DUTIES ~~OF THE STATE~~. (1) It ~~shall be~~ is the goal of the people ~~of Montana~~ to ~~provide for the establishment~~ establish of a system of education which will develop the full educational potential of each person. Equality of educational opportunity ~~shall be~~ is guaranteed to each person of the state.

(2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.

~~(2)~~ (3) The legislature shall provide ~~for~~ a basic system of quality free public elementary and secondary schools. The legislature may ~~also~~ provide ~~for~~ such other educational institutions, public libraries, and educational programs as ~~are deemed~~ it deems desirable. It shall fund and distribute in an equitable manner to the school districts ~~of the state~~ the state's share of the cost of the basic elementary and secondary school system.

Section 2. PUBLIC SCHOOL FUND. The public school fund of the state shall consist of: ~~the~~

(1) ~~proceeds~~ Proceeds ~~of such~~ from the school lands ~~as~~ which have ~~heretofore~~ been ~~granted~~, or may hereafter be granted, ~~to the state~~ by the ~~general government~~ United States, known as school lands; ~~and these~~

(2) Lands granted in lieu ~~of such~~; thereof,

(3) ~~lands~~ Lands ~~acquired~~ given or granted by ~~gift or grant from~~ any person or corporation under any law or grant of the ~~general government~~ United States, ~~and of~~

(4) ~~all~~ All other grants of land or money made ~~to the state~~ from the ~~general government~~ United States for general educational purposes, or ~~where~~ no other special purpose ~~is indicated in such grant~~;

(5) ~~all~~ All interests in estates, ~~or distributive shares of estates~~ that ~~may~~ escheat to the state;

(6) ~~all~~ All unclaimed shares and dividends of any corporation incorporated ~~under the laws of~~ in the state, ~~and~~

(7) ~~All~~ All other grants, gifts, devises or bequests made to the state for general educational purposes.

Section 3. PUBLIC SCHOOL FUND INVIOLATE. The public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion.

Section 4. BOARD OF LAND COMMISSIONERS. The governor, superintendent of public instruction, ~~state~~ auditor, secretary of state, and attorney general ~~shall~~ constitute the ~~state~~ board of land commissioners~~, which shall have~~ It has the direction, control, leasing, exchange, and sale of the school lands ~~of the state~~, and the lands ~~granted or~~ which have been or may hereafter be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be ~~prescribed~~ provided by law.

Section 5. PUBLIC SCHOOL FUND REVENUE. (1) Ninety-five ~~per cent (95%)~~ percent of all the interest received on the public school ~~funds~~ fund ~~of the state~~, and ninety-five ~~percentum (95%)~~ percent of all ~~rents~~ part received from the leasing of school lands and ~~of~~ all other income from the public school ~~funds~~ fund shall be equitably apportioned annually to public elementary and secondary school districts as provided by law.

(2) The remaining five ~~percentum~~ percent ~~(5%)~~ of all ~~the~~ interest received on the public school ~~funds~~ fund ~~of the state~~, and the remaining five ~~percentum~~ percent ~~(5%)~~ of all ~~the rents~~ rent received from the leasing of school lands and ~~of~~ all other income from the public school ~~funds~~ fund~~,~~ shall annually be added to the public school ~~funds~~ fund ~~of the state~~ and become and forever remain an inseparable and inviolable part thereof.

Section 6. AID PROHIBITED TO SECTARIAN SCHOOLS. (1) ~~Neither the~~ The ~~legislative assembly~~ legislature, ~~nor any county~~ counties, ~~city~~ cities, ~~town~~ towns, ~~or~~ school ~~district~~ districts, ~~or other~~ and public corporations~~,~~ shall ~~ever~~ not make ~~directly or indirectly,~~ any direct or indirect appropriation~~,~~ or ~~pay~~ payment from any public fund or monies ~~whatever~~, or ~~make~~ any grant of lands or other property for any sectarian purpose or to ~~in~~ aid ~~of~~ any church, ~~or for any sectarian purpose, or to aid in the support of any~~ school, academy, seminary, college, university, or other literary~~,~~ or scientific institution, controlled in whole or in part by any church, sect, or denomination ~~whatever~~.

(2) This section shall not apply to funds from federal sources provided to the state for the express purpose of distribution to non-public education.

Section 7. NON-DISCRIMINATION IN EDUCATION. No religious or partisan test or qualification shall ~~ever~~ be required of any ~~person~~ teacher or student as a condition of admission into any public educational institution ~~of the state~~~~,~~ ~~either as teacher~~

~~of student; nor shall attendance~~ Attendance shall not be required at any religious service. ~~whatever, nor shall any~~ No sectarian tenets shall be advocated in any public educational institution of the state. ~~nor shall any~~ No person shall be ~~debarred~~ refused admission to any public educational institution ~~or learning~~ on account of sex, race, creed, religion, political beliefs, or national origin.

Section 8. SCHOOL DISTRICT TRUSTEES ~~ELECTIONS~~. The supervision and control of schools in each school district shall be vested in a ~~school~~ board. ~~The legislative assembly shall provide for elections~~ of ~~school district~~ trustees to be elected as provided by law.

Section 9. ~~(1)~~ ~~STATE BOARD~~ BOARDS OF EDUCATION. (1) There ~~shall be~~ is a state board of education composed of the ~~Board~~ board of regents of higher education ~~Public Education~~ and the ~~Board~~ board of public education ~~Regents of Higher Education as hereafter designated~~. It ~~shall be~~ is responsible for long-range planning, and for coordinating and ~~evaluation of~~ evaluating policies, and programs, for the state's educational systems. It shall submit unified budget requests. ~~In case of a~~ A tie vote at ~~a~~ any meeting may be broken by the governor, who is an ex officio member of each component board, ~~may cast a vote~~.

~~(2)~~ (3) ~~BOARD OF PUBLIC EDUCATION.~~ (a) There ~~shall be~~ is a board of public education ~~which shall~~ to exercise general supervision over the public school system and such other public educational institutions as ~~may~~ may be assigned by law. Other duties of the board shall be provided by law.

(b) ~~Said~~ The board ~~shall consists~~ consist of seven members appointed by the governor, ~~with confirmation of~~ and confirmed by the senate, to overlapping terms as provided by law. The governor, commissioner of higher education and state superintendent of public instruction shall be ex officio non-voting members of the board. ~~The duties of this board and of the superintendent of public instruction shall be prescribed by law.~~

~~(3)~~ (2) (a) The government and control of the Montana ~~University~~ university ~~System~~ system ~~shall be~~ is vested in a board of regents of higher education ~~who shall be selected as provided herein. The regents~~ which shall have full power, responsibility, and authority to supervise, coordinate, manage and control the Montana ~~University~~ university ~~System~~ system and shall supervise and coordinate other public educational institutions ~~which may be~~ assigned by law.

(b) ~~Said~~ The board ~~shall consist~~ consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms, ~~subject to confirmation by the senate,~~ under regulations as provided by law. ~~The board shall appoint a commissioner of higher education and prescribe his term and duties.~~ The governor and superintendent of public instruction ~~shall be~~

are ex officio non-voting members of ~~this~~ the board.

(c) The board shall appoint a commissioner of higher education and prescribe his term and duties.

(d) The funds and appropriations under the control of the board of regents ~~shall be~~ are subject to the same audit provisions as are all other state funds ~~of the state~~.

Section 10 ~~42~~. STATE UNIVERSITY FUNDS. The funds of the ~~state~~ Montana university system and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be ~~prescribed~~ provided by law, and shall be guaranteed by the state against loss or diversion. The interest ~~of said~~ from such invested funds, together with the ~~rents~~ rent from leased lands or properties, shall be devoted to the maintenance and perpetuation of ~~these~~ the respective institutions.

BE IT PROPOSED BY THE EDUCATION AND PUBLIC LANDS COMMITTEE:

That there be a new Article on Public lands to read as follows:

ARTICLE___

PUBLIC LANDS

Section 1. PUBLIC LAND TRUST, DISPOSITION. (1) All lands of the state that have been or may be granted by congress, or acquired by gift or grant or devise from any person or corporation, shall be public lands of the state. They shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised.

(2) No such land or any estate or interest therein shall ever be disposed of except in pursuance of general laws providing for such disposition, or until the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

(3) No land which the state holds by grant from the United States which prescribes the manner of disposal and minimum price shall be disposed of except in the manner and for at least the price prescribed without the consent of the United States.

(4) All public land shall be classified by the board of land commissioners in a manner provided by law. Any public land may be exchanged for other land, public or private, which is equal in value and, as closely as possible, equal in area.

BE IT PROPOSED BY THE EDUCATION AND PUBLIC LANDS COMMITTEE:

That there be a new Article on Public Lands to read as follows:

ARTICLE___

PUBLIC LANDS

Section 1. PUBLIC LAND TRUST, DISPOSITION. (1) All lands of the state that have been or ~~that~~ may ~~hereafter~~ be granted ~~to the state~~ by congress, ~~and all lands~~ or acquired by gift or grant or devise, from any person or corporation, shall be public lands of the state~~;~~. ~~and~~ They shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised~~;~~. ~~and not of~~

(2) No such land~~;~~ ~~nor~~ or any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, ~~nor or unless~~ until the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, ~~be~~ has been paid or safely secured to the state~~;~~. ~~nor shall any~~

(3) No ~~lands~~ land which the state holds by grant from the United States ~~(in any case in)~~ which prescribes the manner of disposal and minimum price ~~are so prescribed)~~ shall be disposed, of except in the manner and for the least the price prescribed ~~in the grant thereof,~~ without the consent of the United States. ~~Said~~

(4) All public ~~lands~~ land shall be classified by the board of land commissioners in a manner ~~prescribed~~ provided by law. Any ~~of said~~ public ~~lands~~ land may be exchanged for other ~~lands~~ land, public or private, which ~~are~~ is equal in value and, as closely as possible, equal in area.

EDUCATION - Report No. X

Comments on Style, Form, and Grammar

Section 1. Deletions remove two "false imperatives"; they do not alter substance. That comment follows upon the conclusion that there is no substantive difference between "provide" and "provide for".

Section 2. Serving the cause of comprehension by ordering does not alter substance.

Section 4. Changes do not alter substance.

Section 5. Changes do not alter substance.

Section 6. Changes do not alter substance.

Section 7. No change in substance.

Section 8. The title was changed to accord with the substance.

Section 9. Deleting subsection titles and reordering does not change substance.

Section 10. (Renumbered from 12). No change in substance.

PUBLIC LANDS

Section 1. Providing subsections and altering style do not change substance.

ORDER OF BUSINESS NO. 5 - FINAL CONSIDERATION

STYLE AND DRAFTING - EDUCATION - REPORT NO. X

ARTICLE ___

EDUCATION

Section 1. EDUCATIONAL GOALS AND DUTIES. (1) It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.

(2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.

(3) The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system.

Section 2. PUBLIC SCHOOL FUND. The public school fund of the state shall consist of:

(1) proceeds from the school lands which have been or may hereafter be granted by the United States;

(2) lands granted in lieu thereof;

(3) lands given or granted by any person or corporation under any law or grant of the United States;

(4) all other grants of land or money made from the United States for general educational purposes or without special purpose;

(5) all interests in estates that escheat to the state;

(6) all unclaimed shares and dividends of any corporation incorporated in the state;

(7) all other grants, gifts, devises or bequests made to the state for general educational purposes.

Section 3. PUBLIC SCHOOL FUND INVIOLATE. The public school fund shall forever remain inviolate, guaranteed by the state

against loss or diversion.

Section 4. BOARD OF LAND COMMISSIONERS. The governor, superintendent of public instruction, auditor, secretary of state, and attorney general constitute the board of land commissioners. It has the authority to direct, control, lease, exchange, and sell school lands and lands which have been or may be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be provided by law.

Section 5. PUBLIC SCHOOL FUND REVENUE. (1) Ninety-five percent of all the interest received on the public school fund and ninety-five percent of all rent received from the leasing of school lands and all other income from the public school fund shall be equitably apportioned annually to public elementary and secondary school districts as provided by law.

(2) The remaining five percent of all interest received on the public school fund, and the remaining five percent of all rent received from the leasing of school lands and all other income from the public school fund shall annually be added to the public school fund and become and forever remain an inseparable and inviolable part thereof.

Section 6. AID PROHIBITED TO SECTARIAN SCHOOLS. (1) The legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination.

(2) This section shall not apply to funds from federal sources provided to the state for the express purpose of distribution to non-public education.

Section 7. NON-DISCRIMINATION IN EDUCATION. No religious or partisan test or qualification shall be required of any teacher or student as a condition of admission into any public educational institution. Attendance shall not be required at any religious service. No sectarian tenets shall be advocated in any public educational institution of the state. No person shall be refused admission to any public educational institution on account of sex, race, creed, religion, political beliefs, or national origin.

Section 8. SCHOOL DISTRICT TRUSTEES. The supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law.

Section 9. BOARDS OF EDUCATION. (1) There is a state board of education composed of the board of regents of higher

education and the board of public education. It is responsible for long-range planning, and for coordinating and evaluating policies and programs for the state's educational systems. It shall submit unified budget requests. A tie vote at any meeting may be broken by the governor, who is an ex officio member of each component board.

(2) (a) The government and control of the Montana university system is vested in a board of regents of higher education which shall have full power, responsibility, and authority to supervise, coordinate, manage and control the Montana university system and shall supervise and coordinate other public educational institutions assigned by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms, as provided by law. The governor and superintendent of public instruction are ex officio non-voting members of the board.

(c) The board shall appoint a commissioner of higher education and prescribe his term and duties.

(d) The funds and appropriations under the control of the board of regents are subject to the same audit provisions as are all other state funds.

(3) (a) There is a board of public education to exercise general supervision over the public school system and such other public educational institutions as may be assigned by law. Other duties of the board shall be provided by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms as provided by law. The governor, commissioner of higher education and state superintendent of public instruction shall be ex officio non-voting members of the board.

Section 10. STATE UNIVERSITY FUNDS. The funds of the Montana university system and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be provided by law, and shall be guaranteed by the state against loss or diversion. The interest from such invested funds, together with the rent from leased lands or properties, shall be devoted to the maintenance and perpetuation of the respective institutions.

ORDER OF BUSINESS NO. 5 - FINAL CONSIDERATION

STYLE & DRAFTING - PUBLIC LANDS - REPORT NO. X

ARTICLE ___

PUBLIC LANDS

Section 1. PUBLIC LAND TRUST, DISPOSITION. (1) All lands of the state that have been or may be granted by congress, or acquired by gift or grant or devise from any person or corporation, shall be public lands of the state. They shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised.

(2) No such land or any estate or interest therein shall ever be disposed of except in pursuance of general laws providing for such disposition, or until the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

(3) No land which the state holds by grant from the United States which prescribes the manner of disposal and minimum price shall be disposed of except in the manner and for at least the price prescribed without the consent of the United States.

(4) All public land shall be classified by the board of land commissioners in a manner provided by law. Any public land may be exchanged for other land, public or private, which is equal in value and, as closely as possible, equal in area.

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

REPORT OF COMMITTEE ON STYLE, DRAFTING,

TRANSITION AND SUBMISSION ON

LOCAL GOVERNMENT

No. XI

Date Reported: March 20, 1972

/s/ John M. Schiltz, Chairman

/s/ William A. Burkhardt, Vice Chairman

TO: Montana Constitutional Convention

SUBJECT: LOCAL GOVERNMENT

Ladies and Gentlemen:

The Committee on Style, Drafting, Transition and Submission transmits revisions of the above Article for consideration of the Convention.

Immediately following this letter you will find the above Article as revised by the Committee. Following that is the Article indicating (by underlining) words we have added and (by crossing out) words we have deleted from the Article as approved. Finally, there is an explanation of the changes we have made.

Sincerely,

/s/ John M. Schiltz
Chairman of the Committee
on Style, Drafting, Transition
and Submission

/s/ William A. Burkhardt
Vice Chairman of the Committee
on Style, Drafting, Transition
and Submission

BE IT PROPOSED BY THE LOCAL GOVERNMENT COMMITTEE:

That there be a new Article on Local Government to read as follows:

ARTICLE

LOCAL GOVERNMENT

Section 1. DEFINITION. The term "local government units" includes, but is not limited to, counties and incorporated cities and towns. Other local government units may be established by law.

Section 2. COUNTIES. The counties of the state are those that exist on the date of ratification of this Constitution. No county boundary may be changed or county seat tranferred until approved by a majority of those voting on the question in each county affected.

Section 3. FORMS OF GOVERNMENT. (1) The legislature shall provide methods for governing local government units and procedures for incorporating, classifying, merging, consolidating, and dissolving such units, and altering their boundaries. The legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question.

(2) One optional form of county government includes, but is not limited to, the election of three county commissioners, a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a coroner, and a public administrator. The terms, qualifications, duties, and compensation of these offices shall be provided by law. The board of county commissioners may consolidate two or more such offices. The boards of two or more counties may provide for a joint office and for the election of one official to perform the duties of any such office in these counties.

Section 4. GENERAL POWERS. (1) A local government unit without self-government powers has the following general powers:

(a) An incorporated city or town has the powers of a municipal corporation and legislative, administrative, and other powers provided or implied by law.

(b) A county has legislative, administrative, and other powers provided or implied by law.

(c) Other local government units have powers provided by law.

(2) The powers of incorporated cities and towns and counties shall be literally construed.

Section 5. SELF-GOVERNMENT CHARTERS. (1) The legislature shall provide procedures permitting a local government unit or combination of units to frame, adopt, amend, revise, or abandon a self-government charter with the approval of a majority of those voting on the question. The procedures shall not require approval of a charter by a legislative body.

(2) If the legislature does not provide such procedures by July 1, 1975, they may be established by election either:

(a) initiated by petition in the local government unit or combination of units; or

(b) called by the governing body of the local government unit or combination of units.

(3) Charter provisions establishing executive, legislative, and administrative structure and organization are superior to statutory provisions.

Section 6. SELF-GOVERNMENT POWERS. A local government unit adopting a self-government charter may exercise any power not prohibited by this Constitution, law, or charter. This grant of self-government powers may be extended to other local government units through optional forms of government provided for in section 3.

Section 7. INTERGOVERNMENTAL COOPERATION. (1) Unless prohibited by law or charter, a local government unit may:

(a) cooperate in the exercise of any function, power, or responsibility with;

(b) share the services of any officer or facilities with;

(c) transfer or delegate any function, power, responsibility, or duty of any officer to one or more other local government units, school districts, the state, or the United States.

(2) The qualified electors of a local government unit may, by initiative or referendum, require it to do so.

Section 8. INITIATIVE AND REFERENDUM. The legislature shall extend the initiative and referendum powers reserved to the people by the Constitution to the qualified electors of each local government unit.

Section 9. VOTER REVIEW OF LOCAL GOVERNMENT. (1) The

legislature shall, within four years of the ratification of this Constitution, provide procedures requiring each local government unit or combination of units to review its structure and submit one alternative form of government to the qualified electors at the next general or special election.

(2) The legislature shall require a review procedure once every ten years after the first election.

BE IT PROPOSED BY THE LOCAL GOVERNMENT COMMITTEE:

That there be a new Article on Local Government to read as follows:

ARTICLE

LOCAL GOVERNMENT

Section 1. DEFINITION. The term "local government units" includes, but is not limited to, counties and incorporated cities and towns. Other local government units may be established by law.

Section 2. COUNTIES. The counties of the state ~~of Montana as they~~ are those that exist ~~at~~ on the ~~adoption~~ date of ratification of this Constitution ~~are the counties of the state~~. No ~~County~~ county ~~boundaries~~ boundary ~~shall~~ may ~~not~~ be changed or county ~~seats~~ seat transferred until approved by a majority of those voting on the question in each county affected.

Section 3. FORMS OF GOVERNMENT. (1) The legislature shall provide ~~by law~~ methods for ~~the government of~~ governing local government units and ~~for~~ procedures ~~of~~ for incorporating, classifying, merging, consolidating, and dissolving such units, and ~~of~~ altering their boundaries. The legislature shall provide ~~by law for~~ such optional or alternative forms of government ~~for~~ that each unit or combination of units ~~to enable a unit or combination of units to~~ may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question.

(2) One optional form of county government includes, but is not limited to, the election of three county commissioners, a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a coroner, and a public administrator, ~~whose~~ The terms, qualifications, duties, and compensation of those offices shall be ~~prescribed~~ provided by law. The boards of ~~County~~ county ~~Commissioners~~ commissioners may consolidate two or more such offices. The board ~~of Commissioners~~ of two or more counties may provide for a joint office and for the election of one official to perform the duties of ~~that~~ any such office in ~~the respective~~ those counties.

Section 4. GENERAL POWERS. (1) A ~~local~~ local government ~~units~~ unit ~~not exercising~~ without self-government powers ~~under Sections 5 and 6 shall have~~ has the following general powers:

~~(1)~~(a) An ~~incorporated~~ incorporated ~~cities and towns shall have~~ city or town has the powers of a municipal corporation and ~~such~~ legislative, administrative, and other powers ~~as~~ provided or

impli-d by law.

~~(2)~~(B) A ~~counties shall have such~~ county has legislative, administrative, and other powers as provided or implied by law.

~~(3) The powers of incorporated cities and towns and counties shall be liberally construed.~~

~~(4)~~(C) Other local government units ~~shall~~ have ~~such~~ powers ~~as~~ provided by law.

~~(3)~~(2) The powers of incorporated cities and towns and counties shall be liberally construed.

Section 5. SELF-GOVERNMENT CHARTERS. (1) The legislature shall ~~prescribe~~ provide procedures ~~and may set limits under which~~ permitting a local government unit or combination of units ~~may~~ to frame, adopt, amend, revise, or abandon a self-government charter with the approval of a majority of those voting on the question. The ~~prescribed~~ procedures, ~~however,~~ shall not require approval of a charter by a legislative body.

(2) If the legislature does not provide such procedures by July 1, 1975, they may be established by election either:

(a) Initiated by petition in the local government unit or combination of units; or

(b) Called by the governing body of the local government unit or combination of units.

(3) Charter provisions ~~with respect to a local government units~~ establishing executive, legislative, and administrative structure and organization ~~shall be~~ are superior to statutory provisions.

Section 6. SELF-GOVERNMENT POWERS. A ~~local~~ local government ~~units~~ unit adopting a self-government ~~charters~~ charter may exercise ~~all~~ any ~~powers~~ power not prohibited by this Constitution, ~~by~~ law, or ~~by~~ charter. This grant of self-government powers may be extended to other local government units through optional forms of government provided for in ~~Section~~ section 3.

~~Section 7. INTERGOVERNMENTAL COOPERATION. A local government unit by act of its governing body may, or, upon being required by initiative or referendum, shall cooperate, consolidate or agree in the exercise of any function, power or responsibility with, or share the services of an officer or facilities, or transfer or delegate any function, power or responsibility or duties of an officer to one or more other local government units, school districts, the state or the United States, unless prohibited by law or charter.~~

Section 7. INTERGOVERNMENTAL COOPERATION. (1) Unless pro-

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hibited by law or charter, a local government unit may:

(a) cooperate in the exercise of any function, power, or responsibility with;

(b) share the services or any officer or facilities with;

(c) transfer or delegate any function, power, responsibility, or duty of any officer to one or more other local government units, school districts, the state or the United States.

(2) The qualified electors of a local government unit may, by initiative or referendum, require it to do so.

Section ~~98~~. INITIATIVE AND REFERENDUM. The legislature shall extend the initiative and referendum powers reserved to the people by the Constitution ~~shall be extended by law~~ to the qualified ~~voters~~ electors of each local government unit.

Section ~~119~~. VOTER REVIEW OF LOCAL GOVERNMENT. (1) The legislature shall, within four years of the ~~adoption~~ ratification of this Constitution, provide ~~for~~ procedures ~~by which~~ requiring each local government unit or combination of units to ~~either separately or jointly shall~~ review ~~the government~~ its structure ~~of the local unit or joint unit~~ and ~~shall~~ submit one alternative form of government to the ~~voters~~ qualified electors at the next general or special election.

(2) The legislature shall ~~provide for~~ require a review procedure ~~each~~ once every ten years after the first election.

REPORT NO. XI - LOCAL GOVERNMENT

COMMENTS ON STYLE, FORM, AND GRAMMAR

Section 2. Changes in the first sentence specify the date upon which the identity of the counties will be established. The noun "ratification" was substituted for "adoption" because the former is applied by the present Constitution to the process which will occur on June 6.

Section 3. Language changes shorten and clarify without altering substance.

Section 4. Changes in language and order do not alter substance.

Section 5. Language changes do not alter substance. The words "may set limits" were removed from subsection (1) for two reasons: 1. The verb shifts from the mandatory "shall" to the permissive "may." 2. The legislature "may set limits" in the usual exercise of its powers without any reference being made thereto.

Section 6. Changes from plural to singular accord with good drafting standards.

Section 7. Reorganizing produces clarity without changing substance.

Section 9. Language changes do not alter substance.

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

REPORT OF COMMITTEE ON STYLE, DRAFTING,

TRANSITION AND SUBMISSION ON

GENERAL GOVERNMENT

No. XII

Date Reported: March 20, 1972

/s/ John M. Schiltz, Chairman

/s/ William A. Burkhardt, Vice Chairman

TO: Montana Constitutional Convention

SUBJECT: GENERAL GOVERNMENT

Ladies and Gentlemen:

The Committee on Style, Drafting, Transition and Submission transmits revisions of the above Article for consideration of the Convention.

Immediately following this letter you will find the above Article as revised by the Committee. Following that is the Article indicating (by underlining) words we have added and (by crossing out) words we have deleted from the Article as approved. Finally, there is an explanation of the changes we have made.

Sincerely,

/s/ John M. Schiltz
Chairman of the Committee
on Style, Drafting, Transition
and Submission

/s/ William A. Burkhardt
Vice Chairman of the Committee
on Style, Drafing, Transition
and Submission

BE IT PROPOSED BY THE GENERAL GOVERNMENT AND CONSTITUTIONAL AMENDMENT COMMITTEE:

That there be a new Article on General Government to read as follows:

ARTICLE

GENERAL GOVERNMENT

Section 1. SEPARATION OF POWERS. The power of the government of this state is divided among three distinct branches--legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this Constitution expressly directed or permitted.

Section 2. CONTINUITY OF GOVERNMENT. The seat of government shall be in Helena, except during periods of emergency resulting from disasters or enemy attack. The legislature may enact laws to insure the continuity of government during a period of emergency without regard for other provisions of the Constitution. They shall be effective only during the period of emergency that affects a particular office or governmental operation.

Section 3. OATH OF OFFICE. Members of the legislature and all executive, ministerial and judicial officers, shall take and subscribe the following oath or affirmation, before they enter upon the duties of their offices: "I do solemnly swear (or affirm) that I will support, protect and defend the Constitution of the United States, and the Constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God)." No other oath, declaration, or test shall be required as a qualification for any office or public trust.

Section 4. INITIATIVE. (1) The people may enact laws by initiative on all matters except appropriations of money and local or special laws prohibited by this Constitution.

(2) Each initiative petition must contain the full text of the proposal. Each shall be signed by at least five percent of the qualified electors in each of at least one-third of the legislative representative districts and the total number of signers must be at least five percent of the total qualified electors of the state. A petition shall be filed with the secretary of state at least three months prior to the election at which it will be voted upon.

(3) The sufficiency of the initiative petition shall not be

questioned after the election is held.

Section 5. REFERENDUM. (1) The people may approve or reject by referendum any act of the legislature except an appropriation of money. A referendum shall be held either upon order by the legislature or upon petition signed by at least five percent of the qualified electors in each of at least one-third of the legislative representative districts. The total number of signers must be at least five percent of the qualified electors of the state. A referendum petition shall be filed with the secretary of state no later than six months after adjournment of the legislature which passed the act.

(2) An act referred to the people is in effect until suspended by petition signed by at least 15 percent of the qualified electors in a majority of the legislative representative districts. If so suspended the act shall become operative only after it is approved at an election, the result of which has been determined and declared as provided by law.

Section 6. ELECTIONS. The people shall vote on initiative and referendum at the general election unless the legislature orders a special election.

Section 7. NUMBER OF ELECTORS. The number of qualified electors required in each legislative representative district and in the state shall be determined by the number of votes cast for governor in the preceding general election.

Section 8. PROHIBITION. The provisions of this Article do not apply to CONSTITUTIONAL REVISION, Article XIII.

Section 9. RECALL. The legislature may provide for the recall of all elected officials of the state and local government units.

Section 10. GAMBLING. All forms of gambling, lotteries, and gift enterprises are prohibited unless authorized by acts of the legislature or by the people through initiative or referendum.

Section 10. GAMBLING. All forms of gambling, lotteries, and gift enterprises are prohibited.

Section 11. BOUNDARIES. The sovereignty and jurisdiction of the state of Montana shall prevail within the area encompassed by the following boundaries:

Beginning at the point of intersection of the 104th meridian of west longitude and the 45th parallel of north latitude, thence clockwise west on said parallel to its intersection with the 111th meridian; south on said meridian to the crest of the Rocky Mountains; northwestward on said crest (the continental divide) to the summit of Lost Trail Pass intersecting there with the southeast end and crest of the Bitter Root Mountains; thence

northwestward on the crest of the Bitter Root Mountains and Range to the 116th meridian; north on said meridian to the 49th parallel; east on said parallel to the 104th meridian; and south on said meridian to the place of beginning.

BE IT PROPOSED BY THE GENERAL GOVERNMENT AND CONSTITUTIONAL AMENDMENT COMMITTEE:

That there be a new Article on General Government to read as follows:

ARTICLE ___

GENERAL GOVERNMENT

Section 1. SEPARATION OF POWERS. The ~~powers~~ power of ~~the~~ government of this state ~~are~~ is divided ~~into~~ among three distinct branches~~:--the~~ legislative, executive, and judicial~~,. and no~~ No person or ~~collection of~~ persons charged with the exercise of ~~powers~~ power properly belonging to one ~~of these branches~~ branch shall exercise any ~~powers~~ power properly belonging to either of the others, except as in this Constitution expressly directed or permitted.

Section 2. CONTINUITY OF GOVERNMENT. The seat of government shall be in Helena, except during periods of emergency resulting from disasters or enemy attack. The ~~legislative assembly~~ legislature may enact laws to insure the continuity of ~~governmental~~ government ~~operations~~ during a period of emergency~~.--Such laws may deviate--from~~ without regard for other provisions of the ~~Montana Constitution~~ Constitution, ~~conflicting therewith but~~ They shall be effective only during the period of emergency that affects a particular office or governmental operation.

Section 3. OATH OF OFFICE. Members of the ~~legislative assembly~~ legislature and all ~~officers~~, executive, ministerial ~~or~~ and judicial officers, shall~~, before they enter upon the duties of their respective offices,~~ take and subscribe the following oath or affirmation, before they enter upon the duties of their offices ~~to--wit~~: "I do solemnly swear (or affirm) that I will support, protect and defend the Constitution of the United States, and the Constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God)." ~~And--no~~ No other oath, declaration, or test shall be required as a qualification for any office or public trust.

Section 4. INITIATIVE. (1) The people may enact laws by initiative on all matters except appropriations of money and local or special laws prohibited by this Constitution.

(2) Each initiative petition must contain the full text of the proposed measure. ~~Initiative--petitions~~ Each ~~must~~ shall be signed by at least five percent ~~or more~~ of the qualified electors ~~legal voters~~ in each of at least one-third ~~or more~~ of the legislative representative districts and the total number of signers must be at least five percent ~~or more~~ of the total ~~legal--voters~~

qualified electors of the state. ~~Each petition must contain the full text of the proposed measure.~~ A ~~petitions~~ petition ~~must~~ shall be filed with the ~~Secretary~~ secretary of ~~State~~ state at least three months ~~or more~~ prior to the election at which ~~they~~ it will be voted upon.

(3) The sufficiency of the initiative petition shall not be questioned ~~once~~ after the election is held.

Section 5. REFERENDUM. (1) The people may approve or reject by referendum any ~~acts~~ act of the legislature ~~by referendum~~, except an ~~appropriations~~ appropriation of money. A referendum ~~may~~ shall be ~~ordered~~ held either upon order by the ~~legislative assembly~~, legislature or upon petition signed by at least five percent ~~or more~~ of the ~~legal voters~~ qualified electors in each of at least one-third ~~or more~~ of the legislative representative districts. ~~and the~~ The total number of signers must be at least five percent ~~or more~~ of the ~~total legal voters~~ qualified electors of the state. A ~~Referendum~~ referendum ~~petitions~~ petition ~~must~~ shall be filed with the ~~Secretary~~ secretary of ~~State~~ state no later than six months after adjournment of the ~~legislative assembly~~ legislature which passed the ~~bill~~ act.

(2) An ~~Acts~~ act ~~of the legislature~~ referred to the people ~~are~~ is in ~~full force and~~ effect ~~unless~~ until suspended by ~~petitions~~ petition signed by at least 15 percent of the ~~legal voters~~ qualified electors ~~of~~ in a majority of the ~~whole number of the~~ legislative representative districts ~~of the state, in which case~~ If so suspended the ~~law~~ act shall ~~be~~ become ~~inoperative~~ operative ~~until such time as~~ only after it ~~shall be passed upon~~ is approved at an election, ~~and~~ the result of which has been determined and declared as provided by law.

~~Section 6. ELECTIONS. All measures referred to the people shall be voted upon at the regular biennial election unless a special election is ordered by the legislative assembly.~~

Section 6. ELECTIONS. The people shall vote on initiative and referendum at the general election unless the legislature orders a special election.

~~Section 7. LEGAL VOTERS. The number of legal voters for each legislative representative district and for the state is determined by the votes cast for the office of Governor in the regular election immediately preceding filing of petitions for initiative or referendum measures.~~

Section 7. NUMBER OF ELECTORS. The number of qualified electors required in each legislative representative district and in the state shall be determined by the number of votes cast for governor in the preceding general election.

Section ~~98~~. ~~RESTRICTION.~~ PROHIBITION. The provisions of ~~This~~ this Article ~~is not applicable~~ do not apply to CONSTITU-

TIONAL REVISION, ~~as covered in~~ Article XIII ~~of this Constitution~~.

Section ~~10~~9. RECALL. ~~Laws may be enacted to~~ The legislature may provide for the recall of all elected officials of the state and ~~its political subdivisions~~ local government units.

Section ~~11~~10. GAMBLING. All forms of gambling, lotteries, and gift enterprises are prohibited unless authorized by acts of the legislature or by the people through initiative or referendum.

Section ~~11~~10. GAMBLING. All forms of gambling, lotteries, and gift enterprises are prohibited.

Section ~~12~~11. BOUNDARIES. The sovereignty and jurisdiction of the state of Montana shall prevail within the area encompassed by the following boundaries:

Beginning at the point of intersection of the 104th meridian of west longitude and the 45th parallel of north latitude, thence clockwise west on said parallel to its intersection with the 111th meridian; south on said meridian to the crest of the Rocky Mountains; northwestward on said crest (the continental divide) to the summit of Lost Trail Pass intersecting there with the southeast end and crest of the Bitter ~~root~~ Root Mountains; ~~hence~~ thence northwestward on the crest of the Bitter ~~root~~ Root Mountains and Range to 116th meridian; north on said meridian to the 49th parallel; east on said parallel to the 104th meridian; and south on said meridian to the place of beginning.

Report No. XII - General Government

COMMENTS ON STYLE, FORM AND GRAMMAR

Section 1. The changes in language make plain that the power of government is one whole which is divided into three parts.

Section 2. Changes in language clarify and shorten without affecting substance.

Section 3. Recordering provides flow without altering substance.

Sections 4 and 5. Recordering and language changes do not alter substance.

Section 6. Changes make clear that both initiative and referendum are covered.

Section 7. Changes clarify.

Section 8. Changes emphasize the prohibition.

Section 9. The phrase "local government units", adopted in section 1, Article XI, LOCAL GOVERNMENT, was substituted for "its political subdivisions".

Section 10. The adoption schedule will provide for the deletion of whichever form of the section is not approved by the voters.

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

COMMITTEE ON STYLE, DRAFTING,

TRANSITION, AND SUBMISSION PROPOSAL

No. XIII

Date Reported: March 16, 1972

/s/ John M. Schiltz Chairman

William A. Burkhardt, Vice Chairman
(original unsigned)

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Date: March 16, 1972

To: MONTANA CONSTITUTIONAL CONVENTION

From: Committee on Style, Drafting, Transition and Submission

Ladies and Gentlemen:

The Committee on Style, Drafting, Transition and Submission submits a unanimous proposal entitled "COMPACT WITH THE UNITED STATES."

Its raison d'etre appears in the appended comment.

/s/ John M. Schiltz
Chairman

William A. Burkhardt, Vice Chairman
(original unsigned)

UNANIMOUS PROPOSAL

BE IT PROPOSED BY THE COMMITTEE ON STYLE, DRAFTING, TRANSITION AND SUBMISSION:

That there be a new Article on Compact with the United States to read as follows:

ARTICLE ___

COMPACT WITH THE UNITED STATES

All provisions of the enabling act of Congress (approved February 22, 1889, 25 Stat. 676) and of Ordinance No. 1, appended to the Constitution of the state of Montana and approved February 22, 1889, including the agreement and declaration that all lands owned or held by any Indian or Indian tribes shall remain under the absolute jurisdiction and control of the congress of the United States, continue in full force and effect until revoked by the consent of the United States and the people of Montana.

/s/ John M. Schiltz
Chairman

William A. Burkhardt, Vice Chairman
(original unsigned)

/s/ Robert Lee Kelleher

/s/ D. I. Holland

/s/ Virginia W. Blend

/s/ Lucile Speer

/s/ J. C. Garlington

/s/ Chet Blaylock

/s/ Richard B. Roeder

/s/ Ben E. Berg

/s/ Jerome T. Loendorf

COMMENTS

The proposed Article is a response to Delegate Proposal No. 15, which was referred to this Committee, and to other expressions of concern at the Convention. It is similar to a provision in the new North Dakota Constitution. Its only function is to serve as a reminder that the guarantees upon which Congress conditioned the entry of Montana into the Union persist even though Ordinance No. 1 is not reprinted.

APPENDIX

Delegate Proposal No. 15, sponsored by Messrs. Scanlin and Vermillion, was examined and considered by the Committee and adopted in part.

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

REPORT OF COMMITTEE ON STYLE, DRAFTING,

TRANSITION AND SUBMISSION

FINAL REPORT

Date Reported: March 22, 1972

/s/ John M. Schiltz, Chairman

/s/ William A. Burkhardt, Vice Chairman

FINAL REPORT

COMMENTS ON STYLE, FORM, AND GRAMMAR

1. To consist with the change made by the Convention in proposal No. 12, GENERAL GOVERNMENT, the noun "branch" was substituted for "department" in:

Article V, section 11 (unicameral and bicameral)

Article VI, sections 1, 4, 5, 15

Article XIII, section 4.

2. To order material, the following provisions were moved as shown:

(a) Salary commission -- from Article V, THE LEGISLATURE, section 5, subsection 2, to Article XIII, GENERAL PROVISIONS, section 4.

(b) Prohibited payments -- from Article V, THE LEGISLATURE, section 16 (unicameral) section 15 (bicameral), to Article VIII, REVENUE AND FINANCE, section 14.

(c) Code of ethics -- from Article V, THE LEGISLATURE, section 17 (unicameral) section 16 (bicameral), to Article XIII, GENERAL PROVISIONS, section 5.

(d) Exemption laws -- from Article VII, THE JUDICIARY, section 12, to Article XIII, GENERAL PROVISIONS, section 6.

(e) Perpetuities -- from Article VII, THE JUDICIARY, section 13, to Article XIII, GENERAL PROVISIONS, section 7.

3. To avoid repeating a sentence identical to that appearing as section 3 of Article X, EDUCATION AND PUBLIC LANDS, the first sentence of subsection (2), section 13, Article VIII, REVENUE AND FINANCE, was deleted.

TO: Montana Constitutional Convention

SUBJECT: FINAL REPORT

Ladies and Gentlemen:

The Committee on Style, Drafting, Transition and Submission transmits its final report for consideration of the Convention.

Immediately following this letter you will find:

(a) COMMENTS identifying changes in form or order.

(b) The proposed Constitution.

(c) Adoption Schedule.

(d) Transition Schedule.

(e) A proposed form of ballot.

The Committee wishes to thank Professor Gardner Cromwell, Consultant; Sandra Muckelston and Diana Dowling, Counsel; and Betty Nelson, staff secretary.

Sincerely,

/s/ John M. Schiltz
Chairman

/s/ William A. Burkhardt
Vice Chairman

/s/ Ben F. Berg, Jr.

/s/ J. C. Garlington

/s/ Jerome T. Icendorf

/s/ Chet Blaylock

/s/ David L. Holland

/s/ Richard B. Roeder

/s/ Virginia H. Blend

/s/ Robert Lee Kelleher

/s/ Lucile Speer

PREAMBLE

We the people of Montana grateful to God for the quiet beauty of our state, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life, equality of opportunity and to secure the blessings of liberty for this and future generations do ordain and establish this Constitution.

ARTICLE I

COMPACT WITH THE UNITED STATES

All provisions of the enabling act of Congress (approved February 22, 1889, 25 Stat. 676), as amended and of Ordinance No. 1, appended to the Constitution of the state of Montana and approved February 22, 1889, including the agreement and declaration that all lands owned or held by any Indian or Indian tribes shall remain under the absolute jurisdiction and control of the congress of the United States, continue in full force and effect until revoked by the consent of the United States and the people of Montana.

ARTICLE II

DECLARATION OF RIGHTS

Section 1. POPULAR SOVEREIGNTY. All political power is vested in and derived from the people. All government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole.

Section 2. SELF-GOVERNMENT. The people have the exclusive right of governing themselves as a free, sovereign, and independent state. They may alter or abolish the Constitution and form of government whenever they deem it necessary.

Section 3. INALIENABLE RIGHTS. All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.

Section 4. INDIVIDUAL DIGNITY. The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights or account of race, color, sex, culture, social origin or condition, or political or religious ideas.

Section 5. FREEDOM OF RELIGION. The state shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

Section 6. FREEDOM OF ASSEMBLY. The people shall have the right peaceably to assemble, petition for redress or peaceably protest governmental action.

Section 7. FREEDOM OF SPEECH, EXPRESSION, AND PRESS. No law shall be passed impairing the freedom of speech or expression. Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty. In all suits and prosecutions for libel or slander the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts.

Section 8. RIGHT OF PARTICIPATION. The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies

prior to the final decision as may be provided by law.

Section 9. RIGHT TO KNOW. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

Section 10. RIGHT OF PRIVACY. The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

Section 11. SEARCHES AND SEIZURES. The people shall be secure in their persons, papers, homes and effects from unreasonable searches and seizures. No warrant to search any place, or seize any person or thing shall issue without describing the place to be searched or the person or thing to be seized, or without probable cause, supported by oath or affirmation reduced to writing.

Section 12. RIGHT TO BEAR ARMS. The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.

Section 13. RIGHT OF SUFFRAGE. All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

Section 14. ADULT RIGHTS. A person 18 years of age or older is an adult for all purposes.

Section 15. RIGHTS OF PERSONS NOT ADULTS. The rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this article unless specifically precluded by laws which enhance the protection of such persons.

Section 16. THE ADMINISTRATION OF JUSTICE. Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character. No person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation Laws of this state. Right and justice shall be administered without sale, denial, or delay.

Section 17. DUE PROCESS OF LAW. No person shall be deprived of life, liberty, or property without due process of law.

Section 18. STATE SUBJECT TO SUIT. The state, counties,

cities, towns, and all other local governmental entities shall have no immunity from suit for injury to a person or property. This provision shall apply only to causes of action arising after July 1, 1973.

Section 19. HABEAS CORPUS. The privilege of the writ of habeas corpus shall never be suspended.

Section 20. INITIATION OF PROCEEDINGS. (1) Criminal offenses within the jurisdiction of any court inferior to the district court shall be prosecuted by complaint. All criminal actions in district court, except those on appeal, shall be prosecuted either by information, after examination and commitment by a magistrate or after leave granted by the court, or by indictment without such examination, commitment or leave.

(2) A grand jury shall consist of eleven persons, of whom eight must concur to find an indictment. A grand jury shall be drawn and summoned only at the discretion and order of the district judge.

Section 21. BAIL. All persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great.

Section 22. EXCESSIVE SANCTIONS. Excessive bail shall not be required, or excessive fines imposed, or cruel and unusual punishments inflicted.

Section 23. DETENTION. No person shall be imprisoned for the purpose of securing his testimony in any criminal proceeding longer than may be necessary in order to take his deposition. If he can give security for his appearance at the time of trial, he shall be discharged upon giving the same; if he cannot give security, his deposition shall be taken in the manner provided by law, and in the presence of the accused and his counsel, or without their presence, if they shall fail to attend the examination after reasonable notice of the time and place thereof.

Section 24. RIGHTS OF THE ACCUSED. In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right of the state to have a change of venue for any of the causes for which the defendant may obtain the same.

Section 25. SELF-INCRIMINATION AND DOUBLE JEOPARDY. No person shall be compelled to testify against himself in a criminal proceeding. No person shall be again put in jeopardy for the same offense previously tried in any jurisdiction.

Section 26. TRIAL BY JURY. The right of trial by jury is secured to all and shall remain inviolate. But upon default of appearance or by consent of the parties expressed in such manner as the law may provide, all cases may be tried without a jury or before fewer than the number of jurors provided by law. In all civil actions, two-thirds of the jury may render a verdict, and a verdict so rendered shall have the same force and effect as if all had concurred therein. In all criminal actions, the verdict shall be unanimous.

Section 27. IMPRISONMENT FOR DEBT. No person shall be imprisoned for debt except in the manner provided by law, upon refusal to deliver up his estate for the benefit of his creditors, or in cases of tort, where there is strong presumption of fraud.

Section 28. RIGHTS OF THE CONVICTED. Laws for the punishment of crime shall be founded on the principles of prevention and reformation. Full rights are restored by termination of state supervision for any offense against the state.

Section 29. EMINENT DOMAIN. Private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made to or paid into court for the owner. In the event of litigation, just compensation shall include necessary expenses of litigation to be awarded by the court when the private property owner prevails.

Section 30. TREASON AND DESCENT OF ESTATES. Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court; no person shall be attainted of treason or felony by the legislature; no conviction shall cause the loss of property to the relatives or heirs of the convicted. The estates of suicides shall descend or vest as in cases of natural death.

Section 31. EX POST FACTO, OBLIGATION OF CONTRACTS, AND IRREVOCABLE PRIVILEGES. No ex post facto law nor any law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislature.

Section 32. CIVILIAN CONTROL OF THE MILITARY. The military shall always be in strict subordination to the civil power; no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in the manner provided by law.

Section 33. IMPORTATION OF ARMED PERSONS. No armed person or persons or armed body of men shall be brought into this state for the preservation of the peace, or the suppression of domestic violence, except upon the application of the legislature, or of

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the governor when the legislature cannot be convened.

Section 34. UNENUMERATED RIGHTS. The enumeration in this Constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

Section 35. SERVICEMEN, SERVICEWOMEN, AND VETERANS. The people declare that Montana servicemen, servicewomen, and veterans may be given special considerations determined by the legislature.

ARTICLE III

GENERAL GOVERNMENT

Section 1. SEPARATION OF POWERS. The power of the government of this state is divided into three distinct branches -- legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this Constitution expressly directed or permitted.

Section 2. CONTINUITY OF GOVERNMENT. The seat of government shall be in Helena, except during periods of emergency resulting from disasters or enemy attack. The legislature may enact laws to insure the continuity of government during a period of emergency without regard for other provisions of the Constitution. They shall be effective only during the period of emergency that affects a particular office or governmental operation.

Section 3. OATH OF OFFICE. Members of the legislature and all executive, ministerial and judicial officers, shall take and subscribe the following oath or affirmation, before they enter upon the duties of their offices: "I do solemnly swear (or affirm) that I will support, protect and defend the Constitution of the United States, and the Constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God)." No other oath, declaration, or test shall be required as a qualification for any office or public trust.

Section 4. INITIATIVE. (1) The people may enact laws by initiative on all matters except appropriations of money and local or special laws.

(2) Initiative petitions must contain the full text of the proposed measure, shall be signed by at least five percent of the qualified electors in each of at least one-third of the legislative representative districts and the total number of signers must be at least five percent of the total qualified electors of the state. Petitions shall be filed with the secretary of state at least three months prior to the election at which the measure will be voted upon.

(3) The sufficiency of the initiative petition shall not be questioned after the election is held.

Section 5. REFERENDUM. (1) The people may approve or reject by referendum any act of the legislature except an appropriation of money. A referendum shall be held either upon order by the legislature or upon petition signed by at least five percent of the qualified electors in each of at least one-third of the

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legislative representative districts. The total number of signers must be at least five percent of the qualified electors of the state. A referendum petition shall be filed with the secretary of state no later than six months after adjournment of the legislature which passed the act.

(2) An act referred to the people is in effect until suspended by petitions signed by at least 15 percent of the qualified electors in a majority of the legislative representative districts. If so suspended the act shall become operative only after it is approved at an election, the result of which has been determined and declared as provided by law.

Section 6. ELECTIONS. The people shall vote on initiative and referendum measures at the general election unless the legislature orders a special election.

Section 7. NUMBER OF ELECTORS. The number of qualified electors required in each legislative representative district and in the state shall be determined by the number of votes cast for the office of governor in the proceeding general election.

Section 8. PROHIBITION. The provisions of this Article do not apply to CONSTITUTIONAL REVISION, Article XIV.

Section 9. GAMBLING. All forms of gambling, lotteries, and gift enterprises are prohibited unless authorized by acts of the legislature or by the people through initiative or referendum.

Section 9. GAMBLING. All forms of gambling, lotteries, and gift enterprises are prohibited.

ARTICLE IV

SUFFRAGE AND ELECTIONS

Section 1. BALLOT. All elections by the people shall be by secret ballot.

Section 2. QUALIFIED ELECTOR. Any citizen of the United States 18 years of age or older who meets the registration and residence requirements provided by law is a qualified elector unless he is serving a sentence for a felony in a penal institution or is of unsound mind, as determined by a court.

Section 3. ELECTIONS. The legislature shall provide by law the requirements for residence, registration, absentee voting, and administration of elections. It may provide for a system of poll booth registration, and shall insure the purity of elections and guard against abuses of the electoral process.

Section 4. ELIGIBILITY FOR PUBLIC OFFICE. Any qualified elector is eligible to any public office except as otherwise provided in this Constitution. The legislature may provide additional qualifications but no person convicted of a felony shall be eligible to hold office until his final discharge from state supervision.

Section 5. RESULT OF ELECTIONS. In all elections held by the people, the person or persons receiving the largest number of votes shall be declared elected.

Section 6. PRIVILEGE FROM ARREST. A qualified elector is privileged from arrest at polling places and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace.

ARTICLE V

THE LEGISLATURE

Section 1. POWER AND STRUCTURE. The legislative power is vested in a legislature of one chamber whose members are designated senators. The people reserve to themselves the powers of initiative and referendum.

Section 2. SIZE. The number of senators shall be provided by law, but it shall not be smaller than 90 nor larger than 105.

Section 3. ELECTION AND TERMS. A senator shall be elected for a term of four years to begin on a date provided by law. One-half of the senators shall be elected every two years.

Section 4. QUALIFICATIONS. A candidate for the legislature shall be a resident of the state for at least one year next preceding the general election. For six months next preceding the general election, he shall be a resident of the county if it contains one or more districts or of the district if it contains all or parts of more than one county.

Section 5. COMPENSATION. Each member of the legislature shall receive compensation for his services and allowances provided by law. No legislature may fix its own compensation.

Section 6. SESSIONS. The legislature shall be a continuous body for two-year periods beginning when newly elected members take office. Any business, bill, or resolution pending at adjournment of a session shall carry over with the same status to any other session of the legislature during the biennium. The legislature shall meet at least once a year in regular sessions of not more than 60 legislative days. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor or at the written request of a majority of the members.

Section 7. VACANCIES. A vacancy in the legislature shall be filled by special election for the unexpired term unless otherwise provided by law.

Section 8. IMMUNITY. A member of the legislature is privileged from arrest during attendance at sessions of the legislature and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace. He shall not be questioned in any other place for any speech or debate in the legislature.

Section 9. DISQUALIFICATION. No member of the legislature shall, during the term for which he shall have been elected, be appointed to any civil office under the state; and no member of

congress, or other person holding an office (except notary public, or in the militia) under the United States or this state, shall be a member of the legislature during his continuance in office.

Section 10. ORGANIZATION AND PROCEDURE. (1) The legislature shall judge the election and qualifications of senators. It may by law vest in the courts the power to try and determine contested elections. It shall choose its officers from among its members, keep a journal, and make rules for its proceedings. It may expel or punish a senator for good cause shown with the concurrance of two-thirds of all the senators.

(2) A majority of the senators constitutes a quorum. A smaller number may adjourn from day to day and compel attendance of absent members.

(3) The sessions of the legislature and of the committee of the whole, all committee meetings, and all hearings shall be open to the public.

(4) The legislature may establish a legislative council and other interim committees. The legislature shall establish a legislative post-audit committee which shall supervise post-auditing duties provided by law.

Section 11. BILLS. (1) A law shall be passed by bill which shall not be so altered or amended on its passage through the legislature as to change its original purpose. No bill shall become law except by a vote of the majority of all members present and voting.

(2) Every vote of each member on each substantive question in the legislature, in any committee, or in committee of the whole shall be recorded and made public. On final passage, the vote shall be taken by ayes and noes and the names entered on the journal.

(3) Each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject, clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void.

(4) A general appropriation bill shall contain only appropriations for the ordinary expenses of the legislative, executive, and judicial branches, for interest on the public debt, and for public schools. Every other appropriation shall be made by a separate bill containing but one subject.

(5) No appropriation shall be made for religious, charitable, industrial, educational, or benevolent purposes to any private individual, private association, or private corporation not under control of the state.

(6) A law may be challenged on the ground of noncompliance with this section only within two years after its effective date.

Section 12. LOCAL AND SPECIAL LEGISLATION. The legislature shall not pass a special or local act when a general act is, or can be made, applicable.

Section 13. IMPEACHMENT. (1) The governor, executive officers, heads of state departments, judicial officers, and such other officers as may be provided by law are subject to impeachment, and upon conviction shall be removed from office. Other proceedings for removal from public office for cause may be provided by law.

(2) The legislature shall provide for the manner, procedure, and causes for impeachment and shall provide for a tribunal.

(3) Impeachment can be brought only by a two-thirds vote of the legislature. The tribunal hearing the charges shall convict only by a vote of two-thirds or more of its members.

(4) Conviction shall extend only to removal from office, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law.

Section 14. DISTRICTING AND APPORTIONMENT. (1) The state shall be divided into as many districts as there are senators and each district shall elect one senator. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.

(2) In the legislative session following ratification of this Constitution and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of the legislature shall each select two commissioners. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time provided, a majority of the supreme court shall select him.

(3) The commission shall submit its plan to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendations. Within 30 days thereafter, the commission shall file its final plan with the secretary of state and it shall become law. The commission is then dissolved.

Section 15. REFERENDUM OF UNICAMERAL LEGISLATURE. (1) In

1980 the secretary of state shall place upon the ballot at the general election the question: "Shall the unicameral legislature form be continued?"

(2) If a majority of the qualified electors voting on the question answer in the affirmative, the form shall be continued, and this section shall be of no further effect.

(3) If a majority of the qualified electors voting on the question answer in the negative, Article V of this Constitution is amended by deleting sections 1, 2, 3, 10, 13, and 14, and inserting in lieu thereof the following:

(a) "Section 1. POWER AND STRUCTURE. The legislative power is vested in a legislature consisting of a senate and a house of representatives. The people reserve to themselves the powers of initiative and referendum."

(b) "Section 2. SIZE. The size of the legislature shall be provided by law, but the senate shall not have more than 50 or fewer than 40 members and the house shall not have more than 100 or fewer than 80 members."

(c) "Section 3. ELECTION AND TERMS. A member of the house of representatives shall be elected for a term of two years and a member of the senate for a term of four years, each to begin on a date provided by law. One-half of the senators shall be elected every two years."

(d) "Section 10. ORGANIZATION AND PROCEDURE. (1) Each house shall judge the election and qualifications of its members. It may by law vest in the courts the power to try and determine contested elections. Each house shall choose its officers from among its members, keep a journal, and make rules for its proceedings. Each house may expel or punish a member for good cause shown with the concurrence of two-thirds of all its members."

"(2) A majority of each house constitutes a quorum. A smaller number may adjourn from day to day and compel attendance of absent members."

"(3) The sessions of the legislature and of the committee of the whole, all committee meetings, and all hearings shall be open to the public."

"(4) The legislature may establish a legislative council and other interim committees. The legislature shall establish a legislative post-audit committee which shall supervise post-auditing duties provided by law."

"(5) Neither house shall, without the consent of the other, adjourn or recess for more than three days or to any place other than that in which the two houses are sitting."

(e) "Section 13. IMPEACHMENT. (1) The governor, executive officers, heads of state departments, judicial officers, and such other officers as may be provided by law are subject to impeachment, and upon conviction shall be removed from office. Other proceedings for removal from public office for cause may be provided by law.

"(2) The legislature shall provide for the manner, procedure and causes for impeachment and may select the senate as tribunal.

"(3) Impeachment shall be brought only by a two-thirds vote of the house. The tribunal hearing the charges shall convict only by a vote of two-thirds or more of its members.

"(4) Conviction shall extend only to removal from office, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law."

(f) "Section 14. DISTRICTING AND APPORTIONMENT. (1) The state shall be divided into as many districts as there are members of the house, and each district shall elect one representative. Each senate district shall be composed of two adjoining house districts, and shall elect one senator. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.

"(2) In the legislative session following this amendment and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of each house shall each designate one commissioner. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time provided, a majority of the supreme court shall select him.

"(3) The commission shall submit its plan to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendations. Within 30 days thereafter, the commission shall file its final plan with the secretary of state and it shall become law. The commission is then dissolved."

(4) The members of the unicameral legislature shall remain in office and their authority to act shall continue until the members of a bicameral body are elected and qualified.

(5) The Senate chamber existing upon the date of adoption of this Article shall remain intact until the election provided for in this section has determined whether the unicameral legis-

lature is to continue.

(6) When the provisions of this section have been carried out, it shall be of no further effect.

ARTICLE V

THE LEGISLATURE

Section 1. POWER AND STRUCTURE. The legislative power is vested in a legislature consisting of a senate and a house of representatives. The people reserve to themselves the powers of initiative and referendum.

Section 2. SIZE. The size of the legislature shall be provided by law, but the senate shall not have more than 50 or fewer than 40 members and the house shall not have more than 100 or fewer than 80 members.

Section 3. ELECTION AND TERMS. A member of the house of representatives shall be elected for a term of two years and a member of the senate for a term of four years each to begin on a date provided by law. One-half of the senators shall be elected every two years.

Section 4. QUALIFICATIONS. A candidate for the legislature shall be a resident of the state for at least one year next preceding the general election. For six months next preceding the general election, he shall be a resident of the county if it contains one or more districts or of the district if it contains all or parts of more than one county.

Section 5. COMPENSATION. Each member of the legislature shall receive compensation for his services and allowances provided by law. No legislature may fix its own compensation.

Section 6. SESSIONS. The legislature shall be a continuous body for two-year periods beginning when newly elected members take office. Any business, bill, or resolution pending at adjournment of a session shall carry over with the same status to any other session of the legislature during the biennium. The legislature shall meet at least once a year in regular session of not more than 60 legislative days. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor or at the written request of a majority of the members.

Section 7. VACANCIES. A vacancy in the legislature shall be filled by special election for the unexpired term unless otherwise provided by law.

Section 8. IMMUNITY. A member of the legislature is privileged from arrest during attendance at session of the legislature and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace. He shall not be questioned in any other place for any speech or debate in the legislature.

Section 9. DISQUALIFICATION. No member of the legislature shall, during the term for which he shall have been elected, be appointed to any civil office under the state; and no member of congress, or other person holding an office (except notary public, or the militia) under the United States or this state, shall be a member of the legislature during his continuance in office.

Section 10. ORGANIZATION AND PROCEDURE. (1) Each house shall judge the election and qualifications of its members. It may by law vest in the courts the power to try and determine contested elections. Each house shall choose its officers from among its members, keep a journal, and make rules for its proceedings. Each house may expel or punish a member for good cause shown with the concurrence of two-thirds of all its members.

(2) A majority of each house constitutes a quorum. A smaller number may adjourn from day to day and compel attendance of absent members.

(3) The sessions of the legislature and of the committee of the whole, all committee meetings, and all hearings shall be open to the public.

(4) The legislature may establish a legislative council and other interim committees. The legislature shall establish a legislative post-audit committee which shall supervise post-auditing duties provided by law.

(5) Neither house shall, without the consent of the other, adjourn or recess for more than three days or to any place other than that in which the two houses are sitting.

Section 11. BILLS. (1) A law shall be passed by bill which shall not be so altered or amended on its passage through the legislature as to change its original purpose. No bill shall become law except by a vote of the majority of all members present and voting.

(2) Every vote of each member of the legislature on each substantive question in the legislature, in any committee, or in committee of the whole shall be recorded and made public. On final passage, the vote shall be taken by ayes and noes and the names entered on the journal.

(3) Each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject, clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void.

(4) A general appropriation bill shall contain only appropriations for the ordinary expenses of the legislative, execu-

tive, and judicial branches, for interest on the public debt, and for public schools. Every other appropriation shall be made by a separate bill, containing but one subject.

(5) No appropriation shall be made for religious, charitable, industrial, educational, or benevolent purposes to any private individual, private association, or private corporation not under control of the state.

(6) A law may be challenged on the ground of noncompliance with this section only within two years after its effective date.

Section 12. LOCAL AND SPECIAL LEGISLATION. The legislature shall not pass a special or local act when a general act is, or can be made, applicable.

Section 13. IMPEACHMENT. (1) The governor, executive officers, heads of state departments, judicial officers, and such other officers as may be provided by law are subject to impeachment, and upon conviction shall be removed from office. Other proceedings for removal from public office for cause may be provided by law.

(2) The legislature shall provide for the manner, procedure, and causes for impeachment and may select the senate as tribunal.

(3) Impeachment shall be brought only by a two-thirds vote of the house. The tribunal hearing the charges shall convict only by a vote of two-thirds or more of its members.

(4) Conviction shall extend only to removal from office, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law.

Section 14. DISTRICTING AND APPORTIONMENT. (1) The members of the house, and each district shall elect one representative. Each senate district shall be composed of two adjoining house districts, and shall elect one senator. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.

(2) In the legislative session following ratification of this Constitution and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of each house shall each designate one commissioner. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall select him.

(3) The commission shall submit its plan to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendations. Within 30 days thereafter, the commission shall file its final plan with the secretary of state and it shall become law. The commission is then dissolved.

ARTICLE VI

THE EXECUTIVE

Section 1. OFFICERS. (1) The executive branch includes a governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor.

(2) Each holds office for a term of four years which begins on the first Monday of January next succeeding election, and until a successor is elected and qualified.

(3) Each shall reside at the seat of government, there keep the public records of his office, and perform such other duties as are provided in this Constitution and by law.

Section 2. ELECTION. (1) The governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor shall be elected by the qualified electors at a general election provided by law.

(2) Each candidate for governor shall file jointly with a candidate for lieutenant governor in primary elections, or so otherwise comply with nomination procedures provided by law that the offices of governor and lieutenant governor are voted upon together in primary and general elections.

Section 3. QUALIFICATIONS. (1) No person shall be eligible to the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, or auditor unless he is 25 years of age or older at the time of his election. In addition, each shall be a citizen of the United States who has resided within the state two years next preceding his election.

(2) Any person with the foregoing qualifications is eligible to the office of attorney general if an attorney in good standing admitted to practice law in Montana who has engaged in the active practice thereof for at least five years before election.

(3) The superintendent of public instruction shall have such educational qualifications as are provided by law.

Section 4. DUTIES. (1) The executive power is vested in the governor who shall see that the laws are faithfully executed. He shall have such other duties as are provided in this Constitution and by law.

(2) The lieutenant governor shall perform the duties provided by law and those delegated to him by the governor. No power specifically vested in the governor by this Constitution may be

delegated to the lieutenant governor.

(3) The secretary of state shall maintain official records of the executive branch and of the acts of the legislature, as provided by law. He shall keep the great seal of the state of Montana and perform any other duties provided by law.

(4) The attorney general is the legal officer of the state and shall have the duties and powers provided by law.

(5) The superintendent of public instruction and the auditor shall have such duties as are provided by law.

Section 5. COMPENSATION. (1) Officers of the executive branch shall receive salaries provided by law.

(2) During his term, no elected officer of the executive branch may hold another public office or receive compensation for services from any other governmental agency. He may be a candidate for any public office during his term.

Section 6. VACANCY IN OFFICE. (1) If the office of lieutenant governor becomes vacant by his succession to the office of governor, or by his death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office for the remainder of the term. If both the elected governor and the elected lieutenant governor become unable to serve in the office of governor, succession to the respective offices shall be as provided by law for the period until the next general election. Then, a governor and lieutenant governor shall be elected to fill the remainder of the original term.

(2) If the office of secretary of state, attorney general, auditor, or superintendent of public instruction becomes vacant by death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office until the next general election and until a successor is elected and qualified. The person elected to fill a vacancy shall hold the office until the expiration of the term for which his predecessor was elected.

Section 7. 20 DEPARTMENTS. All executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive branch (except for the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor) and their respective functions, powers, and duties, shall be allocated by law among not more than 20 principal departments so as to provide an orderly arrangement in the administrative organization of state government. Temporary commissions may be established by law and need not be allocated within a department.

Section 8. APPOINTING POWER. (1) The departments provided

for in section 7 shall be under the supervision of the governor. Except as otherwise provided in this Constitution or by law, each department shall be headed by a single executive appointed by the governor subject to confirmation by the senate to hold office until the end of the governor's term unless sooner removed by the governor.

(2) The governor shall appoint, subject to confirmation by the senate, all officers provided for in this Constitution or by law whose appointment or election is not otherwise provided for. They shall hold office until the end of the governor's term unless sooner removed by the governor.

(3) If a vacancy occurs in any such office when the legislature is not in session, the governor shall appoint a qualified person to discharge the duties thereof until the office is filled by appointment and confirmation.

(4) A person not confirmed by the senate for an office shall not, except at its request, be nominated again for that office at the same session, or be appointed to that office when the legislature is not in session.

Section 9. BUDGET AND MESSAGES. The governor shall at the beginning of each legislative session, and may at other times, give the legislature information and recommend measures he considers necessary. The governor shall submit to the legislature at a time fixed by law, a budget for the ensuing fiscal period setting forth in detail for all operating funds the proposed expenditures and estimated revenue of the state.

Section 10. VETO POWER. (1) Each bill passed by the legislature, except bills proposing amendments to the Montana Constitution, bills ratifying proposed amendments to the United States Constitution, resolutions, and initiative and referendum measures, shall be submitted to the governor for his signature. If he does not sign or veto the bill within five days after its delivery to him if the legislature is in session or within 25 days if the legislature is adjourned, it shall become law. The governor shall return a vetoed bill to the legislature with a statement of his reasons therefor.

(2) The governor may return any bill to the legislature with his recommendation for amendment. If the legislature passes the bill in accordance with the governor's recommendation, it shall again return the bill to the governor for his reconsideration. The governor shall not return a bill for amendment a second time.

(3) If after receipt of a veto message, two-thirds of the members present approve the bill, it shall become law.

(4) If the legislature is not in session when the governor vetoes a bill, he shall return the bill with his reasons therefor

to the legislature as provided by law. The legislature may reconvene to reconsider any bill so vetoed.

(5) The governor may veto items in appropriation bills, and in such instances the procedure shall be the same as upon veto of an entire bill.

Section 11. SPECIAL SESSION. Whenever the governor considers it in the public interest, he may convene the legislature.

Section 12. PARDONS. The governor may grant reprieves, commutations and pardons, restore citizenship, and suspend and remit fines and forfeitures subject to procedures provided by law.

Section 13. MILITIA. (1) The governor is commander-in-chief of the militia forces of the state, except when they are in the actual service of the United States. He may call out any part or all of the forces to aid in the execution of the laws, suppress insurrection, repel invasion, or protect life and property in natural disasters.

(2) The militia forces shall consist of all able-bodied citizens of the state except those exempted by law.

Section 14. SUCCESSION. (1) If the governor-elect is disqualified or dies, the lieutenant governor-elect upon qualifying for the office shall become governor for the full term. If the governor-elect fails to assume office for any other reason, the lieutenant governor-elect upon qualifying as such shall serve as acting governor until the governor-elect is able to assume office, or until the office becomes vacant.

(2) The lieutenant governor shall serve as acting governor when so requested in writing by the governor. After the governor has been absent from the state for more than 45 consecutive days, the lieutenant governor shall serve as acting governor.

(3) He shall serve as acting governor when the governor is so disabled as to be unable to communicate to the lieutenant governor the fact of his inability to perform the duties of his office. The lieutenant governor shall continue to serve as acting governor until the governor is able to resume the duties of his office.

(4) Whenever, at any other time, the lieutenant governor and attorney general transmit to the legislature their written declaration that the governor is unable to discharge the powers and duties of his office, the legislature shall convene to determine whether he is able to do so.

(5) If the legislature, within 21 days after convening, determines by two-thirds vote of its members that the governor is unable to discharge the powers and duties of his office, the lieutenant governor shall serve as acting governor. Thereafter,

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when the governor transmits to the legislature his written declaration that no inability exists, he shall resume the powers and duties of his office within 15 days, unless the legislature determines otherwise by two-thirds vote of its members. If the legislature so determines, the lieutenant governor shall continue to serve as acting governor.

(6) If the office of governor becomes vacant by reason of death, resignation, or disqualification, the lieutenant governor shall become governor for the remainder of the term, except as provided in this Constitution.

(7) Additional succession to fill vacancies shall be provided by law.

(8) When there is a vacancy in the office of governor, the successor shall be the governor. The acting governor shall have the powers and duties of the office of governor only for the period during which he serves.

Section 15. INFORMATION FOR GOVERNOR. (1) The governor may require information in writing, under oath when required, from the officers of the executive branch upon any subject relating to the duties of their respective offices.

(2) He may require information in writing, under oath, from all officers and managers of state institutions.

(3) He may appoint a committee to investigate and report to him upon the condition of any executive office or state institution.

ARTICLE VII

THE JUDICIARY

Section 1. JUDICIAL POWER. The judicial power of the state is vested in one supreme court, district courts, justice courts, and such other courts as may be provided by law.

Section 2. SUPREME COURT JURISDICTION. (1) The supreme court has appellate jurisdiction and may issue, hear, and determine writs appropriate thereto. It has original jurisdiction to issue, hear, and determine writs of habeas corpus and such other writs as may be provided by law.

(2) It has general supervisory control over all other courts.

(3) It may make rules governing appellate procedure, practice and procedure for all other courts, admission to the bar and the conduct of its members. Rules of procedure shall be subject to disapproval by the legislature in either of the two sessions following promulgation.

(4) Supreme court process shall extend to all parts of the state.

Section 3. SUPREME COURT ORGANIZATION. (1) The supreme court consists of one chief justice and four justices, but the legislature may increase the number of justices from four to six. A majority shall join in and pronounce decisions, which must be in writing.

(2) A district judge shall be substituted for the chief justice or a justice in the event of disqualification or disability, and the opinion of the district judge sitting with the supreme court shall have the same effect as an opinion of a justice.

Section 4. DISTRICT COURT JURISDICTION. (1) The district court has original jurisdiction in all criminal cases amounting to felony and all civil matters and cases at law and in equity. It may issue all writs appropriate to its jurisdiction. It shall have the power of naturalization and such additional jurisdiction as may be delegated by the laws of the United States or the state of Montana. Its process shall extend to all parts of the state.

(2) The district court shall hear appeals from inferior courts as trials anew unless otherwise provided by law. The legislature may provide for direct review by the district court of decisions of administrative agencies.

(3) Other courts may have jurisdiction of criminal cases not amounting to felony and such jurisdiction concurrent with

that of the district court as may be provided by law.

Section 5. JUSTICES OF THE PEACE. (1) There shall be elected in each county at least one justice of the peace with qualifications, training, and monthly compensation provided by law. There shall be provided such facilities that they may perform their duties in dignified surroundings.

(2) Justice courts shall have such original jurisdiction as may be provided by law. They shall not have trial jurisdiction in any criminal case designated a felony except as examining courts.

(3) The legislature may provide for additional justices of the peace in each county.

Section 6. JUDICIAL DISTRICTS. (1) The legislature shall divide the state into judicial districts and provide for the number of judges in each district. Each district shall be formed of compact territory and be bounded by county lines.

(2) The legislature may change the number and boundaries of judicial districts and the number of judges in each district, but no change in boundaries or the number of districts or judges therein shall work a removal of any judge from office during the term for which he was elected or appointed.

(3) The chief justice may, upon request of the district judge, assign district judges and other judges for temporary service from one district to another, and from one county to another.

Section 7. TERMS AND PAY. (1) All justices and judges shall be paid as provided by law, but salaries shall not be diminished during terms of office.

(2) Terms of office shall be eight years for supreme court justices, six years for district court judges, four years for justices of the peace, and as provided by law for other judges.

Section 8. SELECTION. (1) The governor shall nominate a replacement from nominees selected in the manner provided by law for any vacancy in the office of supreme court justice or district court judge. If the governor fails to nominate within thirty days after receipt of nominees, the chief justice or acting chief justice shall make the nomination. Each nomination shall be confirmed by the senate, but a nomination made while the senate is not in session shall be effective as an appointment until the end of the next session. If the nomination is not confirmed, the office shall be vacant and another selection and nomination shall be made.

(2) If, at the first election after senate confirmation, and at the election before each succeeding term of office, any candidate other than the incumbent justice or district judge

files for election to that office, the name of the incumbent shall be placed on the ballot. If there is no election contest for the office, the name of the incumbent shall nevertheless be placed on the general election ballot to allow voters of the state or district to approve or reject him. If an incumbent is rejected, another selection and nomination shall be made.

(3) If an incumbent does not run, there shall be an election for the office.

Section 9. QUALIFICATIONS. (1) A citizen of the United States who has resided in the state two years immediately before taking office is eligible to the office of supreme court justice or district court judge if admitted to the practice of law in Montana for at least five years prior to the date of appointment or election. Qualifications and methods of selection of judges of other courts shall be provided by law.

(2) No supreme court justice or district court judge shall solicit or receive compensation in any form whatever on account of his office, except salary and actual necessary travel expense.

(3) Except as otherwise provided in this Constitution, no supreme court justice or district court judge shall practice law during his term of office, engage in any other employment for which salary or fee is paid, or hold office in a political party.

(4) Supreme court justices shall reside within the state. Every other judge shall reside during his term of office in the district, county, township, precinct, city or town in which he is elected or appointed.

Section 10. FORFEITURE OF JUDICIAL POSITION. Any holder of a judicial position forfeits that position by either filing for an elective public office other than a judicial position or absenting himself from the state for more than 60 consecutive days.

Section 11. REMOVAL AND DISCIPLINE. (1) The legislature shall create a judicial standards commission consisting of five persons and provide for the appointment thereto of two district judges, one attorney, and two citizens who are neither judges nor attorneys.

(2) The commission shall investigate complaints, make rules implementing this section, and keep its proceedings confidential. It may subpoena witnesses and documents.

(3) Upon recommendation of the commission, the supreme court may:

(a) Retire any justice or judge for disability that seriously interferes with the performance of his duties and is or may become permanent; or

(b) Censure, suspend, or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform his duties, or habitual intemperance.

ARTICLE VIII

REVENUE AND FINANCE

Section 1. TAX PURPOSES. Taxes shall be levied by general laws for public purposes.

Section 2. TAX POWER INALIENABLE. The power to tax shall never be surrendered, suspended, or contracted away.

Section 3. PROPERTY TAX ADMINISTRATION. The state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law.

Section 4. EQUAL VALUATION. All taxing jurisdictions shall use the assessed valuation of property established by the state.

Section 5. PROPERTY TAX EXEMPTIONS. (1) The legislature may exempt from taxation:

(a) Property of the United States, the state, counties, cities, towns, school districts, municipal corporations, and public libraries, but any private interest in such property may be taxed separately.

(b) Institutions of purely public charity, hospitals and places of burial not used or held for private or corporate profit, places for actual religious worship, and property used exclusively for educational purposes.

(c) Any other classes of property.

(2) The legislature may authorize creation of special improvement districts for capital improvements and the maintenance thereof. It may authorize the assessment of charges for such improvements and maintenance against tax exempt property directly benefited thereby.

Section 6. HIGHWAY REVENUE NON-DIVERSION. (1) Revenue from gross vehicle weight fees and excise and license taxes (except general sales and use taxes) on gasoline, fuel, and other energy sources used to propel vehicles on public highways shall be used as authorized by the legislature, after deduction of statutory refunds and adjustments, solely for:

(a) Payment of obligations incurred for construction, reconstruction, repair, operation, and maintenance of public highways, streets, roads, and bridges.

(b) Payment of county, city, and town obligations on streets, roads, and bridges.

(c) Enforcement of highway safety, driver education, tour-

ist promotion, and administrative collection costs.

(2) Such revenue may be appropriated for other purposes by a three-fifths vote of the members of each house of the legislature.

Section 7. TAX APPEALS. The legislature shall provide independent appeal procedures for taxpayer grievances about appraisals, assessments, equalization, and taxes. The legislature shall include a review procedure at the local government unit level.

Section 8. STATE DEBT. No state debt shall be created unless authorized by a two-thirds vote of the members of each house of the legislature or a majority of the electors voting thereon. No state debt shall be created to cover deficits incurred because appropriations exceeded anticipated revenue.

Section 9. BALANCED BUDGET. Appropriations by the legislature shall not exceed anticipated revenue.

Section 10. LOCAL GOVERNMENT DEBT. The legislature shall by law limit debts of counties, cities, towns, and all other local governmental entities.

Section 11. USE OF LOAN PROCEEDS. All money borrowed by or on behalf of the state or any county, city, town, or other local governmental entity shall be used only for purposes specified in the authorizing law.

Section 12. STRICT ACCOUNTABILITY. The legislature shall by law insure strict accountability of all revenue received and money spent by the state and counties, cities, towns, and all other local governmental entities.

Section 13. INVESTMENT OF PUBLIC FUNDS. (1) The legislature shall provide for a unified investment program for public funds and provide rules therefor, including supervision of investment of surplus funds of all counties, cities, towns, and other local governmental entities. Each fund forming a part of the unified investment program shall be separately identified. Except for monies contributed to retirement funds, no public funds shall be invested in private corporate capital stock. The investment program shall be audited at least annually and a report thereof submitted to the governor and legislature.

(2) The public school fund and the permanent funds of the Montana university system and all other state institutions of learning shall be safely and conservatively invested in:

(a) public securities of the state, its subdivisions, local government units, and districts within the state, or

(b) bonds of the United States or other securities fully guaranteed as to principal and interest by the United States, or

(c) such other safe investments bearing a fixed rate of interest as may be provided by law.

Section 14. PROHIBITED PAYMENTS. Except for interest on the public debt, no money shall be paid out of the treasury unless upon an appropriation made by law and a warrant drawn by the proper officer in pursuance thereof.

ARTICLE IX

ENVIRONMENT AND NATURAL RESOURCES

Section 1. PROTECTION AND IMPROVEMENT. (1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.

(2) The legislature shall provide for the administration and enforcement of this duty.

(3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

Section 2. RECLAMATION. All lands disturbed by the taking of natural resources shall be reclaimed. The legislature shall provide effective requirements and standards for the reclamation of lands disturbed.

Section 3. WATER RIGHTS. (1) All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed.

(2) The use of all water that is now or may hereafter be appropriated for sale, rent, distribution, or other beneficial use, the right of way over the lands of others for all ditches, drains, flumes, canals, and aqueducts necessarily used in connection therewith, and the sites for reservoirs necessary for collecting and storing water shall be held to be a public use.

(3) All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.

(4) The legislature shall provide for the administration, control, and regulation of water rights and shall establish a system of centralized records, in addition to the present system of local records.

Section 4. CULTURAL RESOURCES. The legislature shall provide for the identification, acquisition, restoration, enhancement, preservation, and administration of scenic, historic, archeologic, scientific, cultural, and recreational areas, sites, records and objects, and for their use and enjoyment by the people.

ARTICLE X

EDUCATION AND PUBLIC LANDS

Section 1. EDUCATIONAL GOALS AND DUTIES. (1) It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.

(2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.

(3) The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system.

Section 2. PUBLIC SCHOOL FUND. The public school fund of the state shall consist of:

(1) proceeds from the school lands which have been or may hereafter be granted by the United States;

(2) lands granted in lieu thereof;

(3) lands given or granted by any person or corporation under any law or grant of the United States;

(4) all other grants of land or money made from the United States for general educational purposes or without special purpose;

(5) All interests in estates that escheat to the state;

(6) all unclaimed shares and dividends of any corporation incorporated in the state;

(7) all other grants, gifts, devises or bequests made to the state for general educational purposes.

Section 3. PUBLIC SCHOOL FUND INVIOLATE. The public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion.

Section 4. BOARD OF LAND COMMISSIONERS. The governor, superintendent of public instruction, auditor, secretary of state, and attorney general constitute the board of land commis-

sioners. It has the authority to direct, control, lease, exchange, and sell school lands and lands which have been or may be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be provided by law.

Section 5. PUBLIC SCHOOL FUND REVENUE. (1) Ninety-five percent of all the interest received on the public school fund and ninety-five percent of all rent received from the leasing of school lands and all other income from the public school fund shall be equitably apportioned annually to public elementary and secondary school districts as provided by law.

(2) The remaining five percent of all interest received on the public school fund, and the remaining five percent of all rent received from the leasing of school lands and all other income from the public school fund shall annually be added to the public school fund and become and forever remain an inseparable and inviolable part thereof.

Section 6. AID PROHIBITED TO SECTARIAN SCHOOLS. (1) The legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination.

(2) This section shall not apply to funds from federal sources provided to the state for the express purpose of distribution to non-public education.

Section 7. NON-DISCRIMINATION IN EDUCATION. No religious or partisan test or qualification shall be required of any teacher or student as a condition of admission into any public educational institution. Attendance shall not be required at any religious service. No sectarian tenets shall be advocated in any public educational institution of the state. No person shall be refused admission to any public educational institution on account of sex, race, creed, religion, political beliefs, or national origin.

Section 8. SCHOOL DISTRICT TRUSTEES. The supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law.

Section 9. BOARDS OF EDUCATION. (1) There is a state board of education composed of the board of regents of higher education and the board of public education. It is responsible for long-range planning, and for coordinating and evaluating policies and programs for the state's educational systems. It shall submit unified budget requests. A tie vote at any meeting may be broken by the governor, who is an ex officio member of each component

board.

(2) (a) The government and control of the Montana university system is vested in a board of regents of higher education which shall have full power, responsibility, and authority to supervise, coordinate, manage and control the Montana university system and shall supervise and coordinate other public educational institutions assigned by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms, as provided by law. The governor and superintendent of public instruction are ex officio non-voting members of the board.

(c) The board shall appoint a commissioner of higher education and prescribe his term and duties.

(d) The funds and appropriations under the control of the board of regents are subject to the same audit provisions as are all other state funds.

(3) (a) There is a board of public education to exercise general supervision over the public school system and such other public educational institutions as may be assigned by law. Other duties of the board shall be provided by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms as provided by law. The governor, commissioner of higher education and state superintendent of public instruction shall be ex officio non-voting members of the board.

Section 10. STATE UNIVERSITY FUNDS. The funds of the Montana university system and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be provided by law, and shall be guaranteed by the state against loss or diversion. The interest from such invested funds, together with the rent from leased lands or properties, shall be devoted to the maintenance and perpetuation of the respective institutions.

Section 11. PUBLIC LAND TRUST, DISPOSITION. (1) All lands of the state that have been or may be granted by congress, or acquired by gift or grant or devise from any person or corporation, shall be public lands of the state. They shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised.

(2) No such land or any estate or interest therein shall ever be disposed of except in pursuance of general laws providing for such disposition, or until the full market value of the

estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

(3) No land which the state holds by grant from the United States which prescribes the manner of disposal and minimum price shall be disposed of except in the manner and for at least the price prescribed without the consent of the United States.

(4) All public land shall be classified by the board of land commissioners in a manner provided by law. Any public land may be exchanged for other land, public or private, which is equal in value and, as closely as possible, equal in area.

ARTICLE XI

LOCAL GOVERNMENT

Section 1. DEFINITION. The term "local government units" includes, but is not limited to, counties and incorporated cities and towns. Other local government units may be established by law.

Section 2. COUNTIES. The counties of the state are those that exist on the date of ratification of this Constitution. No county boundary may be changed or county seat transferred until approved by a majority of those voting on the question in each county affected.

Section 3. FORMS OF GOVERNMENT. (1) The legislature shall provide methods for governing local government units and procedures for incorporating, classifying, merging, consolidating, and dissolving such units, and altering their boundaries. The legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question.

(2) One optional form of county government includes, but is not limited to, the election of three county commissioners, a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a coroner, and a public administrator. The terms, qualifications, duties, and compensation of those offices shall be provided by law. The board of county commissioners may consolidate two or more such offices. The boards of two or more counties may provide for a joint office and for the election of one official to perform the duties of any such office in those counties.

Section 4. GENERAL POWERS. (1) A local government unit without self-government powers has the following general powers:

(a) An incorporated city or town has the powers of a municipal corporation and legislative, administrative, and other powers provided or implied by law.

(b) A county has legislative, administrative, and other powers provided or implied by law.

(c) Other local government units have powers provided by law.

(2) The powers of incorporated cities and towns and counties shall be literally construed.

Section 5. SELF-GOVERNMENT CHARTERS. (1) The legislature shall provide procedures permitting a local government unit or combination of units to frame, adopt, amend, revise, or abandon a self-government charter with the approval of a majority of those voting on the question. The procedures shall not require approval of a charter by a legislative body.

(2) If the legislature does not provide such procedures by July 1, 1975, they may be established by election either:

(a) Initiated by petition in the local government unit or combination of units; or

(b) Called by the governing body of the local government unit or combination of units.

(3) Charter provisions establishing executive, legislative, and administrative structure and organization are superior to statutory provisions.

Section 6. SELF-GOVERNMENT POWERS. A local government unit adopting a self-government charter may exercise any power not prohibited by this Constitution, law, or charter. This grant of self-government powers may be extended to other local government units through optional forms of government provided for in section 3.

Section 7. INTERGOVERNMENTAL COOPERATION. (1) Unless prohibited by law or charter, a local government unit may:

(a) cooperate in the exercise of any function, power, or responsibility with,

(b) share the services of any officer or facilities with,

(c) transfer or delegate any function, power, responsibility, or duty of any officer to one or more other local government units, school districts, the state, or the United States.

(2) The qualified electors of a local government unit may, by initiative or referendum, require it to do so.

Section 8. INITIATIVE AND REFERENDUM. The legislature shall extend the initiative and referendum powers reserved to the people by the Constitution to the qualified electors of each local government unit.

Section 9. VOTER REVIEW OF LOCAL GOVERNMENT. (1) The legislature shall, within four years of the ratification of this Constitution, provide procedures requiring each local government unit or combination of units to review its structure and submit one alternative form of government to the qualified electors at the next general or special election.

(2) The legislature shall require a review procedure once every ten years after the first election.

ARTICLE XII

DEPARTMENTS AND INSTITUTIONS

Section 1. AGRICULTURE. (1) The legislature shall provide for a Department of Agriculture and enact laws and provide appropriations to protect, enhance, and develop all agriculture.

(2) Special levies may be made on livestock and on agricultural commodities for disease control and indemnification, predator control, and livestock and commodity inspection, protection, research, and promotion. Revenue derived shall be used solely for the purposes of the levies.

Section 2. LABOR. (1) The legislature shall provide for a Department of Labor and Industry, headed by a Commissioner appointed by the governor and confirmed by the senate.

(2) A maximum period of 8 hours is a regular day's work in all industries and employment except agriculture and stock raising. The legislature may change this maximum period to promote the general welfare.

Section 3. INSTITUTIONS AND ASSISTANCE. (1) The state shall establish and support institutions and facilities as the public good may require, including homes which may be necessary and desirable for the care of veterans.

(2) Persons committed to any such institutions shall retain all rights except those necessarily suspended as a condition of commitment. Suspended rights are restored upon termination of the state's responsibility.

(3) The legislature shall provide such economic assistance and social and rehabilitative services as may be necessary for those inhabitants who, by reason of age, infirmities, or misfortune may have need for the aid of society.

ARTICLE XIII

GENERAL PROVISIONS

Section 1. NON-MUNICIPAL CORPORATIONS. (1) Corporate charters shall be granted, modified, or dissolved only pursuant to general law.

(2) The legislature shall provide protection and education for the people against harmful and unfair practices by either foreign or domestic corporations, individuals, or associations.

(3) The legislature shall pass no law retrospective in its operations which imposes on the people a new liability in respect to transactions or considerations already passed.

Section 2. CONSUMER COUNSEL. The legislature shall provide for an office of consumer counsel which shall have the duty of representing consumer interests in hearings before the public service commission or any other successor agency. The legislature shall provide for the funding of the office of consumer counsel by a special tax or the net income or gross revenues of regulated companies.

Section 3. SALARY COMMISSION. The legislature shall create a salary commission to recommend compensation for the judiciary and elected members of the legislative and executive branches.

Section 4. CODE OF ETHICS. The legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for members of the legislature and all state and local officers and employees.

Section 5. EXEMPTION LAWS. The legislature shall enact liberal homestead and exemption laws.

Section 6. PERPETUITIES. No perpetuities shall be allowed except for charitable purposes.

ARTICLE XIV

CONSTITUTIONAL REVISION

Section 1. CONSTITUTIONAL CONVENTION. The legislature, by an affirmative vote of two-thirds of all the members, whether one or more bodies, may at any time submit to the qualified electors the question of whether there shall be an unlimited Convention to revise, alter, or amend this Constitution.

Section 2. INITIATIVE FOR CONSTITUTIONAL CONVENTION. (1) The people may by initiative petition direct the secretary of state to submit to the qualified electors the question of whether there shall be an unlimited Convention to revise, alter, or amend this Constitution. The petition shall be signed by at least 10 percent of the qualified electors of the state. That number shall include at least 10 percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The secretary of state shall certify the filing of the petition in his office and cause the question to be submitted at the next general election.

Section 3. PERIODIC SUBMISSION. If the question of holding a Convention is not otherwise submitted during any period of 20 years, it shall be submitted as provided by law at the general election in the twentieth year following the last submission.

Section 4. CALL OF CONVENTION. If a majority of those voting on the question answer in the affirmative, the legislature shall provide for the calling thereof at its next session. The number of delegates to the Convention shall be the same as that of the larger body of the legislature. The qualifications of delegates shall be the same as the highest qualifications required for election to the legislature. The legislature shall determine whether the delegates may be nominated on a partisan or a nonpartisan basis. They shall be elected at the same places and in the same districts as are the members of the legislative body determining the number of delegates.

Section 5. CONVENTION EXPENSES. The legislature shall, in the act calling the Convention, designate the day, hour, and place of its meeting, and fix and provide for the pay of its members and officers and the necessary expenses of the Convention.

Section 6. OATH, VACANCIES. Before proceeding, the delegates shall take the oath provided in this Constitution. Vacancies occuring shall be filled in the manner provided for filling vacancies in the legislature if not otherwise provided by law.

Section 7. CONVENTION DUTIES. The Convention shall meet after the election of the delegates and prepare such revisions,

alterations, or amendments to the Constitution as may be deemed necessary. They shall be submitted to the qualified electors for ratification or rejection as a whole or in separate articles or amendments as determined by the Convention at an election appointed by the Convention for that purpose not less than two months after adjournment. Unless so submitted and approved by a majority of the electors voting thereon, no such revision, alteration, or amendment shall take effect.

Section 8. AMENDMENT BY LEGISLATIVE REFERENDUM. Amendments to this Constitution may be proposed by any member of the legislature. If adopted by an affirmative roll call vote of two-thirds of all the members thereof, whether one or more bodies, the proposed amendment shall be submitted to the qualified electors at the next general election. If approved by a majority of the electors voting thereon, the amendment shall become a part of this Constitution on the first day of July after certification of the election returns unless the amendment provides otherwise.

Section 9. AMENDMENT BY INITIATIVE. (1) The people may also propose Constitutional amendments by initiative. Petitions including the full text of the proposed amendment shall be signed by at least 10 percent of the qualified electors of the state. That number shall include at least 10 percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The petitions shall be filed with the secretary of state. If the petitions are found to have been signed by the required number of electors, the secretary of state shall cause the amendment to be published as provided by law twice each month for two months previous to the next regular state-wide election.

(3) At that election, the proposed amendment shall be submitted to the qualified electors for approval or rejection. If approved by a majority voting thereon, it shall become a part of the Constitution effective the first day of July following its approval, unless the amendment provides otherwise.

Section 10. PETITION SIGNERS. The number of qualified electors required for the filing of any petition provided for in this Article shall be determined by the number of votes cast for the office of governor in the preceding general election.

Section 11. SUBMISSION. If more than one amendment is submitted at the same election, each shall be so prepared and distinguished that it can be voted upon separately.

ADOPTION SCHEDULE

These Schedule provisions are part of this Constitution only for the limited purposes of determining whether this Constitution has been adopted, determining what changes result from the vote on each of the separately submitted issues, and establishing the general effective date of this Constitution. No provision of this Schedule shall be published unless it becomes part of the Constitution as the result of the adoption of a separately submitted provision.

Section 1. This Constitution, if approved by the electors as provided by the Constitution of 1889, shall take effect on July 1, 1973, except as otherwise provided in sections 1 and 2 of the Transition Schedule. The Constitution of 1889, as amended, shall thereafter be of no effect.

Section 2. (1) If separate issue 2A concerning the unicameral form of the legislature is approved by the electors and if the proposed Constitution is approved by the electors, then:

(a) There shall be deleted from ARTICLE V, THE LEGISLATURE, that portion which concerns the bicameral form.

(b) The words "of each house" are deleted from subsection (2) of section 6 and from section 8, ARTICLE VIII, REVENUE AND FINANCE.

(c) The word "legislature" is substituted for "senate" in subsections (1), (2), and (4) of section 8, ARTICLE VI, THE EXECUTIVE, and in subsections (1) and (2) of section 8, ARTICLE VII, THE JUDICIARY.

(2) If separate issue 2B concerning the bicameral form of the legislature is approved by the electors and if the proposed Constitution is approved by the electors, then there shall be deleted from ARTICLE V, THE LEGISLATURE, that portion which concerns the unicameral form.

Section 3. If separate issue 3A is approved by the electors and if the proposed Constitution is approved by the electors, then there shall be added to section 28, ARTICLE II, DECLARATION OF RIGHTS, the following sentence: "Death shall not be prescribed as a penalty for any crime against the state." And there shall be deleted from section 21 of the same ARTICLE the following: ", except for capital offenses, when the proof is evident or the presumption great".

Section 4. (1) If separate issue 4A is approved by the electors and if the proposed Constitution is approved by the electors, then there shall be deleted from ARTICLE III, GENERAL GOVERNMENT: "Section 10. GAMBLING. All forms of gambling,

lotteries, and gift enterprises are prohibited."

(2) If separate issue 4B is approved by the electors and if the proposed Constitution is approved by the electors, then there shall be deleted from ARTICLE III, GENERAL GOVERNMENT: "Section 10. GAMBLING. All forms of gambling, lotteries, and gift enterprises are prohibited unless authorized by acts of the legislature or by the people through initiative or referendum."

TRANSITION SCHEDULE

The following provisions shall remain part of this Constitution until their terms have been executed. Once each year the attorney general shall review the following provisions and certify to the secretary of state which, if any, have been executed. Any provisions so certified shall thereafter be removed from this Schedule and no longer published as part of this Constitution.

Section 1. Accelerated Effective Date

Section 2. Delayed Effective Date

Section 3. Prospective Operation of Declaration of Rights

Section 4. Terms of Judiciary

Section 5. Terms of Legislators

Section 6. General Transition

Section 1. ACCELERATED EFFECTIVE DATE. Section 14 (DISTRICTING AND APPORTIONMENT) of Article V, THE LEGISLATURE, shall be effective January 1, 1973.

Section 2. DELAYED EFFECTIVE DATE. The provisions of sections 1, 2, and 3 of ARTICLE V, LEGISLATURE, shall not become effective until the date the first redistricting and reapportionment plan becomes law.

Section 3. PROSPECTIVE OPERATION OF DECLARATION OF RIGHTS. Any rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive.

Section 4. TERMS OF JUDICIARY. Supreme court justices, district court judges, and justices of the peace holding office when this Constitution becomes effective shall serve the terms for which they were elected or appointed.

Section 5. TERMS OF LEGISLATORS. (1) The terms of all legislators elected before the effective date of this Constitution shall end on December 31 of the year in which the first redistricting and reapportionment plan becomes law.

(2) The senators first elected under this Constitution shall draw lots to establish a term of two years for one-half of their number.

Section 6. GENERAL TRANSITION. (1) The rights and duties of all public bodies shall remain as if this Constitution had not

been adopted with the exception of such changes as are contained in this Constitution. All laws, ordinances, regulations, and rules of court not contrary to, or inconsistent with, the provisions of this Constitution shall remain in force, until they shall expire by their own limitation or shall be altered or repealed pursuant to this Constitution.

(2) The validity of all public and private bonds, debts, and contracts, and of all suits, actions, and rights of action, shall continue as if no change had taken place.

(3) All officers filling any office by election or appointment shall continue the duties thereof, until their offices shall have been abolished or their successors selected and qualified in accordance with this Constitution or laws enacted pursuant thereto.

OFFICIAL BALLOT

Instructions to voters: Place an "X" in the boxes which express your preferences. The full text of the proposed Constitution and the separate propositions are available for inspection at your polling place.

YOU SHOULD VOTE 4 TIMES

(Vote for one)

[ ] For the proposed Constitution.

1

[ ] Against the proposed Constitution.

(Vote for one)

[ ] 2A. For a unicameral legislature (1 house).

2

[ ] 2B. For a bicameral legislature (2 houses).

(Vote for one)

[ ] 3A. For abolishing the death penalty.

3

[ ] 3B. Against abolishing the death penalty.

(Vote for one)

☐ 4A. For allowing the legislature or the people to authorize gambling.

☐ 4B. Against allowing the legislature or the people to authorize gambling.

The CONSTITUTION of the STATE OF MONTANA

PREAMBLE

We the people of Montana grateful to God for the quiet beauty of our state, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life, equality of opportunity and to secure the blessings of liberty for this and future generations do ordain and establish this constitution.

ARTICLE I
COMPACT WITH THE UNITED STATES

All provisions of the enabling act of Congress (approved February 22, 1889, 25 Stat. 676), as amended and of Ordinance No. 1, appended to the Constitution of the state of Montana and approved February 22, 1889, including the agreement and declaration that all lands owned or held by any Indian or Indian tribes shall remain under the absolute jurisdiction and control of the congress of the United States, continue in full force and effect until revoked by the consent of the United States and the people of Montana.

ARTICLE II
DECLARATION OF RIGHTS

Section 1. **POPULAR SOVEREIGNTY.** All political power is vested in and derived from the people. All government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole.

Section 2. **SELF-GOVERNMENT.** The people have the exclusive right of governing themselves as a free, sovereign, and independent state. They may alter or abolish the constitution and form of government whenever they deem it necessary.

Section 3. **INALIENABLE RIGHTS.** All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.

Section 4. **INDIVIDUAL DIGNITY.** The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

Section 5. **FREEDOM OF RELIGION.** The state shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

Section 6. **FREEDOM OF ASSEMBLY.** The people shall have the right peaceably to assemble, petition for redress or peaceably protest governmental action.

Section 7. **FREEDOM OF SPEECH, EXPRESSION, AND PRESS.** No law shall be passed impairing the freedom of speech or expression. Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty. In all suits and prosecutions for libel or slander the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts.

Section 8. **RIGHT OF PARTICIPATION.** The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

Section 9. **RIGHT TO KNOW.** No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

Section 10. **RIGHT OF PRIVACY.** The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

Section 11. **SEARCHES AND SEIZURES.** The people shall be secure in their persons, papers, homes and effects from unreasonable searches and seizures. No warrant to search any place, or seize any person or thing shall issue without describing the place to be searched or the person or thing to be seized, or without probable cause, supported by oath or affirmation reduced to writing.

Section 12. **RIGHT TO BEAR ARMS.** The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.

Section 13. **RIGHT OF SUFFRAGE.** All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

Section 14. **ADULT RIGHTS.** A person 18 years of age or older is an adult for all purposes.

Section 15. **RIGHTS OF PERSONS NOT ADULTS.** The rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons.

Section 16. **THE ADMINISTRATION OF JUSTICE.** Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character. No person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation Laws of this state. Right and justice shall be administered without sale, denial, or delay.

Section 17. **DUE PROCESS OF LAW.** No person shall be deprived of life, liberty, or property without due process of law.

Section 18. **STATE SUBJECT TO SUIT.** The state, counties, cities, towns, and all other local governmental entities shall have no immunity from suit for injury to a person or property. This provision shall apply only to causes of action arising after July 1, 1973.

Section 19. **HABEAS CORPUS.** The privilege of the writ of habeas corpus shall never be suspended.

Section 20. **INITIATION OF PROCEEDINGS.** (1) Criminal offenses within the jurisdiction of any court inferior to the district court shall be prosecuted by complaint. All criminal actions in district court, except those on appeal, shall be prosecuted either by information, after examination and commitment by a magistrate or after leave granted by the court, or by indictment without such examination, commitment or leave.

(2) A grand jury shall consist of eleven persons, of whom eight must concur to find an indictment. A grand jury shall be drawn and summoned only at the discretion and order of the district judge.

Section 21. **BAIL.** All persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great.

Section 22. **EXCESSIVE SANCTIONS.** Excessive bail shall not be required, or excessive fines imposed, or cruel and unusual punishments inflicted.

Section 23. **DETENTION.** No person shall be imprisoned for the purpose of securing his testimony in any criminal proceeding longer than may be necessary in order to take his deposition. If he can give security for his appearance at the time of trial, he shall be discharged upon giving the same; if he cannot give security, his deposition shall be taken in the manner provided by law, and in the presence of the accused and his counsel, or without their presence, if they shall fail to attend the examination after reasonable notice of the time and place thereof.

Section 24. **RIGHTS OF THE ACCUSED.** In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right of the state to have a change of venue for any of the causes for which the defendant may obtain the same.

Section 25. **SELF-INCRIMINATION AND DOUBLE JEOPARDY.** No person shall be compelled to testify against himself in a criminal proceeding. No person shall be again put in jeopardy for the same offense previously tried in any jurisdiction.

Section 26. **TRIAL BY JURY.** The right of trial by jury is secured to all and shall remain inviolate. But upon default of appearance or by consent of the parties expressed in such manner as the law may provide, all cases may be tried without a jury or before fewer than the number of jurors provided by law. In all civil actions, two-thirds of the jury may render a verdict, and a verdict so rendered shall have the same force and effect as if all had concurred therein. In all criminal actions, the verdict shall be unanimous.

Section 27. **IMPRISONMENT FOR DEBT.** No person shall be imprisoned for debt except in the manner provided by law, upon refusal to deliver up his estate for the benefit of his creditors, or in cases of tort, where there is strong presumption of fraud.

Section 28. **RIGHTS OF THE CONVICTED.** Laws for the punishment of crime shall be founded on the principles of prevention and reformation. Full rights are restored by termination of state supervision for any offense against the state.

Section 29. **EMINENT DOMAIN.** Private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made to or paid into court for the owner. In the event of litigation, just compensation shall include necessary expenses of litigation to be awarded by the court when the private property owner prevails.

Section 30. **TREASON AND DESCENT OF ESTATES.** Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court; no person shall be attainted of treason or felony by the legislature; no conviction shall cause the loss of property to the relatives or heirs of the convicted. The estates of suicides shall descend or vest as in cases of natural death.

Section 31. **EX POST FACTO, OBLIGATION OF CONTRACTS, AND IRREVOCABLE PRIVILEGES.** No ex post facto law nor any law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislature.

Section 32. **CIVILIAN CONTROL OF THE MILITARY.** The military shall always be in strict subordination to the civil power; no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in the manner provided by law.

Section 33. **IMPORTATION OF ARMED PERSONS.** No armed person or persons or armed body of men shall be brought into this state for the preservation of the peace, or the suppression of domestic violence, except upon the application of the legislature, or of the governor when the legislature cannot be convened.

Section 34. **UNENUMERATED RIGHTS.** The enumeration in this constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

Section 35. **SERVICEMEN, SERVICEWOMEN, AND VETERANS.** The people declare that Montana servicemen, servicewomen, and veterans may be given special considerations determined by the legislature.

ARTICLE III
GENERAL GOVERNMENT

Section 1. **SEPARATION OF POWERS.** The power of the government of this state is divided into three distinct branches—legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.

Section 2. **CONTINUITY OF GOVERNMENT.** The seat of government shall be in Helena, except during periods of emergency resulting from disasters or enemy attack. The legislature may enact laws to insure the continuity of government during a period of emergency without regard for other provisions of the constitution. They shall be effective only during the period of emergency that affects a particular office or governmental operation.

Section 3. **OATH OF OFFICE.** Members of the legislature and all executive, ministerial and judicial officers, shall take and subscribe the following oath or affirmation, before they enter upon the duties of their offices: "I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God)." No other oath, declaration, or test shall be required as a qualification for any office or public trust.

Section 4. **INITIATIVE.** (1) The people may enact laws by initiative on all matters except appropriations of money and local or special laws.

(2) Initiative petitions must contain the full text of the proposed measure, shall be signed by at least five percent of the qualified electors in each of at least one-third of the legislative representative districts and the total number of signers must be at least five percent of the total qualified electors of the state. Petitions shall be filed with the secretary of state at least three months prior to the election at which the measure will be voted upon.

(3) The sufficiency of the initiative petition shall not be questioned after the election is held.

Section 5. **REFERENDUM.** (1) The people may approve or reject by referendum any act of the legislature except an appropriation of money. A referendum shall be held either upon order by the legislature or upon petition signed by at least five percent of the qualified electors in each of at least one-third of the legislative representative districts. The total number of signers must be at least five percent of the qualified electors of the state. A referendum petition shall be filed with the secretary of state no later than six months after adjournment of the legislature which passed the act.

(2) An act referred to the people is in effect until suspended by petitions signed by at least 15 percent of the qualified electors in a majority of the legislative representative districts. If so suspended the act shall become operative only after it is approved at an election, the result of which has been determined and declared as provided by law.

Section 6. **ELECTIONS.** The people shall vote on initiative and referendum measures at the general election unless the legislature orders a special election.

Section 7. **NUMBER OF ELECTORS.** The number of qualified electors required in each legislative representative district and in the state shall be determined by the number of votes cast for the office of governor in the preceding general election.

Section 8. **PROHIBITION.** The provisions of this Article do not apply to CONSTITUTIONAL REVISION, Article XIV.

Section 9. **GAMBLING.** All forms of gambling, lotteries, and gift enterprises are prohibited.

ARTICLE IV
SUFFRAGE AND ELECTIONS

Section 1. **BALLOT.** All elections by the people shall be by secret ballot.

Section 2. **QUALIFIED ELECTOR.** Any citizen of the United States 18 years of age or older who meets the registration and residence requirements provided by law is a qualified elector unless he is serving a sentence for a felony in a penal institution or is of unsound mind, as determined by a court.

Section 3. **ELECTIONS.** The legislature shall provide by law the requirements for residence, registration, absentee voting, and administration of elections. It may provide for a system of poll booth registration, and shall insure the purity of elections and guard against abuses of the electoral process.

Section 4. **ELIGIBILITY FOR PUBLIC OFFICE.** Any qualified elector is eligible to any public office except as otherwise provided in this constitution. The legislature may provide additional qualifications but no person convicted of a felony shall be eligible to hold office until his final discharge from state supervision.

Section 5. **RESULT OF ELECTIONS.** In all elections held by the people, the person or persons receiving the largest number of votes shall be declared elected.

Section 6. **PRIVILEGE FROM ARREST.** A qualified elector is privileged from arrest at polling places and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace.

ARTICLE V
THE LEGISLATURE

Section 1. **POWER AND STRUCTURE.** The legislative power is vested in a legislature consisting of a senate and a house of representatives. The people reserve to themselves the powers of initiative and referendum.

Section 2. **SIZE.** The size of the legislature shall be provided by law, but the senate shall not have more than 50 or fewer than 40 members and the house shall not have more than 100 or fewer than 80 members.

Section 3. **ELECTION AND TERMS.** A member of the house of representatives shall be elected for a term of two years and a member of the senate for a term of four years each to begin on a date provided by law. One-half of the senators shall be elected every two years.

Section 4. **QUALIFICATIONS.** A candidate for the legislature shall be a resident of the state for at least one year next preceding the general election. For six months next preceding the general election, he shall be a resident of the county if it contains one or more districts or of the district if it contains all or parts of more than one county.

Section 5. **COMPENSATION.** Each member of the legislature shall receive compensation for his services and allowances provided by law. No legislature may fix its own compensation.

Section 6. **SESSIONS.** The legislature shall be a continuous body for two-year periods beginning when newly elected members take office. Any business, bill, or resolution pending at adjournment of a session shall carry over with the same status to any other session of the legislature during the biennium. The legislature shall meet at least once a year in regular session of not more than 60 legislative days. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor or at the written request of a majority of the members.

Section 7. **VACANCIES.** A vacancy in the legislature shall be filled by special election for the unexpired term unless otherwise provided by law.

Section 8. **IMMUNITY.** A member of the legislature is privileged from arrest during attendance at sessions of the legislature and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace. He shall not be questioned in any other place for any speech or debate in the legislature.

Section 9. **DISQUALIFICATION.** No member of the legislature shall, during the term for which he shall have been elected, be appointed to any civil office under the state; and no member of congress, or other person holding an office (except notary public, or the militia) under the United States or this state, shall be a member of the legislature during his continuance in office.

Section 10. **ORGANIZATION AND PROCEDURE.** (1) Each house shall judge the election and qualifications of its members. It may by law vest in the courts the power to try and determine contested elections. Each house shall choose its officers from among its members, keep a journal, and make rules for its proceedings. Each house may expel or punish a member for good cause shown with the concurrence of two-thirds of all its members.

(2) A majority of each house constitutes a quorum. A smaller number may adjourn from day to day and compel attendance of absent members.

(3) The sessions of the legislature and of the committee of the whole, all committee meetings, and all hearings shall be open to the public.

(4) The legislature may establish a legislative council and other interim committees. The legislature shall establish a legislative post-audit committee which shall supervise post-auditing duties provided by law.

(5) Neither house shall, without the consent of the other, adjourn or recess for more than three days or to any place other than that in which the two houses are sitting.

Section 11. **BILLS.** (1) A law shall be passed by bill which shall not be so altered or amended on its passage through the legislature as to change its original purpose. No bill shall become law except by a vote of the majority of all members present and voting.

(2) Every vote of each member of the legislature on each substantive question in the legislature, in any committee, or in committee of the whole shall be recorded and made public. On final passage, the vote shall be taken by ayes and noes and the names entered on the journal.

(3) Each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject, clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void.

(4) A general appropriation bill shall contain only appropriations for the ordinary expenses of the legislative, executive, and judicial branches, for interest on the public debt, and for public schools. Every other appropriation shall be made by a separate bill, containing but one subject.

(5) No appropriation shall be made for religious, charitable, industrial, educational, or benevolent purposes to any private individual, private association, or private corporation not under control of the state.

(6) A law may be challenged on the ground of noncompliance with this section only within two years after its effective date.

Section 12. **LOCAL AND SPECIAL LEGISLATION.** The legislature shall not pass a special or local act when a general act is, or can be made, applicable.

Section 13. **IMPEACHMENT.** (1) The governor, executive officers, heads of state departments, judicial officers, and such other officers as may be provided by law are subject to impeachment, and upon conviction shall be removed from office. Other proceedings for removal from public office for cause may be provided by law.

(2) The legislature shall provide for the manner, procedure, and causes for impeachment and may select the senate as tribunal.

(3) Impeachment shall be brought only by a two-thirds vote of the house. The tribunal hearing the charges shall convict only by a vote of two-thirds or more of its members.

(4) Conviction shall extend only to removal from office, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law.

Section 14. **DISTRICTING AND APPORTIONMENT.** (1) The state shall be divided into as many districts as there are members of the house, and each district shall elect one

representative. Each senate district shall be composed of two adjoining house districts, and shall elect one senator. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.

(2) In the legislative session following ratification of this constitution and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of each house shall each designate one commissioner. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall select him.

(3) The commission shall submit its plan to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendations. Within 30 days thereafter, the commission shall file its final plan with the secretary of state and it shall become law. The commission is then dissolved.

ARTICLE VI
THE EXECUTIVE

Section 1. **OFFICERS.** (1) The executive branch includes a governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor.

(2) Each holds office for a term of four years which begins on the first Monday of January next succeeding election, and until a successor is elected and qualified.

(3) Each shall reside at the seat of government, there keep the public records of his office, and perform such other duties as are provided in this constitution and by law.

Section 2. **ELECTION.** (1) The governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor shall be elected by the qualified electors at a general election provided by law.

(2) Each candidate for governor shall file jointly with a candidate for lieutenant governor in primary elections, or so otherwise comply with nomination procedures provided by law that the offices of governor and lieutenant governor are voted upon together in primary and general elections.

Section 3. **QUALIFICATIONS.** (1) No person shall be eligible to the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, or auditor unless he is 25 years of age or older at the time of his election. In addition, each shall be a citizen of the United States who has resided within the state two years next preceding his election.

(2) Any person with the foregoing qualifications is eligible to the office of attorney general if an attorney in good standing admitted to practice law in Montana who has engaged in the active practice thereof for at least five years before election.

(3) The superintendent of public instruction shall have such educational qualifications as are provided by law.

Section 4. **DUTIES.** (1) The executive power is vested in the governor who shall see that the laws are faithfully executed. He shall have such other duties as are provided in this constitution and by law.

(2) The lieutenant governor shall perform the duties provided by law and those delegated to him by the governor. No power specifically vested in the governor by this constitution may be delegated to the lieutenant governor.

(3) The secretary of state shall maintain official records of the executive branch and of the acts of the legislature, as provided by law. He shall keep the great seal of the state of Montana and perform any other duties provided by law.

(4) The attorney general is the legal officer of the state and shall have the duties and powers provided by law.

(5) The superintendent of public instruction and the auditor shall have such duties as are provided by law.

Section 5. **COMPENSATION.** (1) Officers of the executive branch shall receive salaries provided by law.

(2) During his term, no elected officer of the executive branch may hold another public office or receive compensation for services from any other governmental agency. He may be a candidate for any public office during his term.

Section 6. **VACANCY IN OFFICE.** (1) If the office of lieutenant governor becomes vacant by his succession to the office of governor, or by his death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office for the remainder of the term. If both the elected governor and the elected lieutenant governor become unable to serve in the office of governor, succession to the respective offices shall be as provided by law for the period until the next general election. Then, a governor and lieutenant governor shall be elected to fill the remainder of the original term.

(2) If the office of secretary of state, attorney general, auditor, or superintendent of public instruction becomes vacant by death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office until the next general election and until a successor is elected and qualified. The person elected to fill a vacancy shall hold the office until the expiration of the term for which his predecessor was elected.

Section 7. **20 DEPARTMENTS.** All executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive branch (except for the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor) and their respective functions, powers, and duties, shall be allocated by law among not more than 20 principal departments so as to provide an orderly arrangement in the administrative organization of state government. Temporary commissions may be established by law and need not be allocated within a department.

Section 8. **APPOINTING POWER.** (1) The departments provided for in section 7 shall be under the supervision of the governor. Except as otherwise provided in this constitution or by law, each department shall be headed by a single executive appointed by the governor subject to confirmation by the senate to hold office until the end of the governor's term unless sooner removed by the governor.

(2) The governor shall appoint, subject to confirmation by the senate, all officers provided for in this constitution or by law whose appointment or election is not otherwise provided for. They shall hold office until the end of the governor's term unless sooner removed by the governor.

(3) If a vacancy occurs in any such office when the legislature is not in session, the governor shall appoint a qualified person to discharge the duties thereof until the office is filled by appointment and confirmation.

(4) A person not confirmed by the senate for an office shall not, except at its request, be nominated again for that office at the same session, or be appointed to that office when the legislature is not in session.

Section 9. **BUDGET AND MESSAGES.** The governor shall at the beginnning of each legislative session, and may at other times, give the legislature information and recommend measures he considers necessary. The governor shall submit to the legislature at a time fixed by law, a budget for the ensuing fiscal period setting forth in detail for all operating funds the proposed expenditures and estimated revenue of the state.

Section 10. **VETO POWER.** (1) Each bill passed by the legislature, except bills proposing amendments to the Montana constitution, bills ratifying proposed amendments to the United States constitution, resolutions, and initiative and referendum measures, shall be submitted to the governor for his signature. If he does not sign or veto the bill within five days after its delivery to him if the legislature is in session or within 25 days if the legislature is adjourned, it shall become law. The governor shall return a vetoed bill to the legislature with a statement of his reasons therefor.

(2) The governor may return any bill to the legislature with his recommendation for amendment. If the legislature passes the bill in accordance with the governor's recommendation, it shall again return the bill to the governor for his reconsideration. The governor shall not return a bill for amendment a second time.

(3) If after receipt of a veto message, two-thirds of the members present approve the bill, it shall become law.

(4) If the legislature is not in session when the governor vetoes a bill, he shall return the bill with his reasons therefor to the legislature as provided by law. The legislature may reconvene to reconsider any bill so vetoed.

(5) The governor may veto items in appropriation bills, and in such instances the procedure shall be the same as upon veto of an entire bill.

Section 11. **SPECIAL SESSION.** Whenever the governor considers it in the public interest, he may convene the legislature.

Section 12. **PARDONS.** The governor may grant repreives, commutations and pardons, restore citizenship, and suspend and remit fines and forfeitures subject to procedures provided by law.

Section 13. **MILITIA.** (1) The governor is commander-in-chief of the militia forces of the state, except when they are in the actual service of the United States. He may call out any part or all of the forces to aid in the execution of the laws, suppress insurrection, repel invasion, or protect life and property in natural disasters.

(2) The militia forces shall consist of all able-bodied citizens of the state except those exempted by law.

Section 14. **SUCCESSION.** (1) If the governor-elect is disqualified or dies, the lieutenant governor-elect upon qualifying for the office shall become governor for the full term. If the governor-elect fails to assume office for any other reason, the lieutenant governor-elect upon qualifying as such shall serve as acting governor until the governor-elect is able to assume office, or until the office becomes vacant.

(2) The lieutenant governor shall serve as acting governor when so requested in writing by the governor. After the governor has been absent from the state for more than 45 consecutive days, the lieutenant governor shall serve as acting governor.

(3) He shall serve as acting governor when the governor is so disabled as to be unable to communicate to the lieutenant governor the fact of his inability to perform the duties of his office. The lieutenant governor shall continue to serve as acting governor until the governor is able to resume the duties of his office.

(4) Whenever, at any other time, the lieutenant governor and attorney general transmit to the legislature their written declaration that the governor is unable to discharge the powers and duties of his office, the legislature shall convene to determine whether he is able to do so.

(5) If the legislature, within 21 days after convening, determines by two-thirds vote of its members that the governor is unable to discharge the powers and duties of his office, the lieutenant governor shall serve as acting governor. Thereafter, when the governor transmits to the legislature his written declaration that no inability exists, he shall resume the powers and duties of his office within 15 days, unless the legislature determines otherwise by two-thirds vote of its members. If the legislature so determines, the lieutenant governor shall continue to serve as acting governor.

(6) If the office of governor becomes vacant by reason of death, resignation, or disqualification, the lieutenant governor shall become governor for the remainder of the term, except as provided in this constitution.

(7) Additional succession to fill vacancies shall be provided by law.

(8) When there is a vacancy in the office of governor, the successor shall be the governor. The acting governor shall have the powers and duties of the office of governor only for the period during which he serves.

Section 15. **INFORMATION FOR GOVERNOR.** (1) The governor may require information in writing, under oath when required, from the officers of the executive branch upon any subject relating to the duties of their respective offices.

(2) He may require information in writing, under oath, from all officers and managers of state institutions.

(3) He may appoint a committee to investigate and report to him upon the condition of any executive office or state institution.

ARTICLE VII
THE JUDICIARY

Section 1. **JUDICIAL POWER.** The judicial power of the state is vested in one supreme court, district courts, justice courts, and such other courts as may be provided by law.

Section 2. **SUPREME COURT JURISDICTION.** (1) The supreme court has appellate jurisdiction and may issue, hear, and determine writs appropriate thereto. It has original jurisdiction to issue, hear, and determine writs of habeas corpus and such other writs as may be provided by law.

(2) It has general supervisory control over all other courts.

(3) It may make rules governing appellate procedure, practice and procedure for all other courts, admission to the bar and the conduct of its members. Rules of procedure shall be subject to disapproval by the legislature in either of the two sessions following promulgation.

(4) Supreme court process shall extend to all parts of the state.

Section 3. **SUPREME COURT ORGANIZATION.** (1) The supreme court consists of one chief justice and four justices, but the legislature may increase the number of justices from four to six. A majority shall join in and pronounce decisions, which must be in writing.

(2) A district judge shall be substituted for the chief justice or a justice in the event of disqualification or disability, and the opinion of the district judge sitting with the supreme court shall have the same effect as an opinion of a justice.

Section 4. **DISTRICT COURT JURISDICTION.** (1) The district court has original jurisdiction in all criminal cases amounting to felony and all civil matters and cases at law and in equity. It may issue all writs appropriate to its jurisdiction. It shall have the power of naturalization and such additional jurisdiction as may be delegated by the laws of the United States or the state of Montana. Its process shall extend to all parts of the state.

(2) The district court shall hear appeals from inferior courts as trials anew unless otherwise provided by law. The legislature may provide for direct review by the district court of decisions of administrative agencies.

(3) Other courts may have jurisdiction of criminal cases not amounting to felony and such jurisdiction concurrent with that of the district court as may be provided by law.

Section 5. **JUSTICES OF THE PEACE.** (1) There shall be elected in each county at least one justice of the peace with qualifications, training, and monthly compensation provided by law. There shall be provided such facilities that they may perform their duties in dignified surroundings.

(2) Justice courts shall have such original jurisdiction as may be provided by law. They shall not have trial jurisdiction in any criminal case designated a felony except as examining courts.

(3) The legislature may provide for additional justices of the peace in each county.

Section 6. **JUDICIAL DISTRICTS.** (1) The legislature shall divide the state into judicial districts and provide for the number of judges in each district. Each district shall be formed of compact territory and be bounded by county lines.

(2) The legislature may change the number and boundaries of judicial districts and the number of judges in each district, but no change in boundaries or the number of districts or judges therein shall work a removal of any judge from office during the term for which he was elected or appointed.

(3) The chief justice may, upon request of the district judge, assign district judges and other judges for temporary service from one district to another, and from one county to another.

Section 7. **TERMS AND PAY.** (1) All justices and judges shall be paid as provided by law, but salaries shall not be diminished during terms of office.

(2) Terms of office shall be eight years for supreme court justices, six years for district court judges, four years for justices of the peace, and as provided by law for other judges.

Section 8. **SELECTION.** (1) The governor shall nominate a replacement from nominees selected in the manner provided by law for any vacancy in the office of supreme court justice or district court judge. If the governor fails to nominate within thirty days after receipt of nominees, the chief justice or acting chief justice shall make the nomination. Each nomination

shall be confirmed by the senate, but a nomination made while the senate is not in session shall be effective as an appointment until the end of the next session. If the nomination is not confirmed, the office shall be vacant and another selection and nomination shall be made.

(2) If, at the first election after senate confirmation, and at the election before each succeeding term of office, any candidate other than the incumbent justice or district judge files for election to that office, the name of the incumbent shall be placed on the ballot. If there is no election contest for the office, the name of the incumbent shall nevertheless be placed on the general election ballot to allow voters of the state or district to approve or reject him. If an incumbent is rejected, another selection and nomination shall be made.

(3) If an incumbent does not run, there shall be an election for the office.

Section 9. **QUALIFICATIONS.** (1) A citizen of the United States who has resided in the state two years immediately before taking office is eligible to the office of supreme court justice or district court judge if admitted to the practice of law in Montana for at least five years prior to the date of appointment or election. Qualifications and methods of selection of judges of other courts shall be provided by law.

(2) No supreme court justice or district court judge shall solicit or receive compensation in any form whatever on account of his office, except salary and actual necessary travel expense.

(3) Except as otherwise provided in this constitution, no supreme court justice or district court judge shall practice law during his term of office, engage in any other employment for which salary or fee is paid, or hold office in a political party.

(4) Supreme court justices shall reside within the state. Every other judge shall reside during his term of office in the district, county, township, precinct, city or town in which he is elected or appointed.

Section 10. **FORFEITURE OF JUDICIAL POSITION.** Any holder of a judicial position forfeits that position by either filing for an elective public office other than a judicial position or absenting himself from the state for more than 60 consecutive days.

Section 11. **REMOVAL AND DISCIPLINE.** (1) The legislature shall create a judicial standards commission consisting of five persons and provide for the appointment thereto of two district judges, one attorney, and two citizens who are neither judges nor attorneys.

(2) The commission shall investigate complaints, make rules implementing this section, and keep its proceedings confidential. It may subpoena witnesses and documents.

(3) Upon recommendation of the commission, the supreme court may:

(a) Retire any justice or judge for disability that seriously interferes with the performance of his duties and is or may become permanent; or

(b) Censure, suspend, or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform his duties, or habitual intemperance.

ARTICLE VIII
REVENUE AND FINANCE

Section 1. **TAX PURPOSES.** Taxes shall be levied by general laws for public purposes.

Section 2. **TAX POWER INALIENABLE.** The power to tax shall never be surrendered, suspended, or contracted away.

Section 3. **PROPERTY TAX ADMINISTRATION.** The state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law.

Section 4. **EQUAL VALUATION.** All taxing jurisdictions shall use the assessed valuation of property established by the state.

Section 5. **PROPERTY TAX EXEMPTIONS.** (1) The legislature may exempt from taxation:

(a) Property of the United States, the state, counties, cities, towns, school districts, municipal corporations, and public libraries, but any private interest in such property may be taxed separately.

(b) Institutions of purely public charity, hospitals and places of burial not used or held for private or corporate profit, places for actual religious worship, and property used exclusively for educational purposes.

(c) Any other classes of property.

(2) The legislature may authorize creation of special improvement districts for capital improvements and the maintenance thereof. It may authorize the assessment of charges for such improvements and maintenance against tax exempt property directly benefited thereby.

Section 6. **HIGHWAY REVENUE NON-DIVERSION.** (1) Revenue from gross vehicle weight fees and excise and license taxes (except general sales and use taxes) on gasoline, fuel, and other energy sources used to propel vehicles on public highways shall be used as authorized by the legislature, after deduction of statutory refunds and adjustments, solely for:

(a) Payment of obligations incurred for construction, reconstruction, repair, operation, and maintenance of public highways, streets, roads, and bridges.

(b) Payment of county, city, and town obligations on streets, roads, and bridges.

(c) Enforcement of highway safety, driver education, tourist promotion, and administrative collection costs.

(2) Such revenue may be appropriated for other purposes by a three-fifths vote of the members of each house of the legislature.

Section 7. **TAX APPEALS.** The legislature shall provide independent appeal procedures for taxpayer grievances about appraisals, assessments, equalization, and taxes. The legislature shall include a review procedure at the local government unit level.

Section 8. **STATE DEBT.** No state debt shall be created unless authorized by a two-thirds vote of the members of each house of the legislature or a majority of the electors voting thereon. No state debt shall be created to cover deficits incurred because appropriations exceeded anticipated revenue.

Section 9. **BALANCED BUDGET.** Appropriations by the legislature shall not exceed anticipated revenue.

Section 10. **LOCAL GOVERNMENT DEBT.** The legislature shall by law limit debts of counties, cities, towns, and all other local governmental entities.

Section 11. **USE OF LOAN PROCEEDS.** All money borrowed by or on behalf of the state or any county, city, town, or other local governmental entity shall be used only for purposes specified in the authorizing law.

Section 12. **STRICT ACCOUNTABILITY.** The legislature shall by law insure strict accountability of all revenue received and money spent by the state and counties, cities, towns, and all other local governmental entities.

Section 13. **INVESTMENT OF PUBLIC FUNDS.** (1) The legislature shall provide for a unified investment program for public funds and provide rules therefor, including supervision of investment of surplus funds of all counties, cities, towns, and other local governmental entities. Each fund forming a part of the unified investment program shall be separately identified. Except for monies contributed to retirement funds, no public funds shall be invested in private corporate capital stock. The investment program shall be audited at least annually and a report thereof submitted to the governor and legislature.

(2) The public school fund and the permanent funds of the Montana university system and all other state institutions of learning shall be safely and conservatively invested in:

(a) Public securities of the state, its subdivisions, local government units, and districts within the state, or

(b) Bonds of the United States or other securities fully guaranteed as to principal and interest by the United States, or

(c) Such other safe investments bearing a fixed rate of interest as may be provided by law.

Section 14. **PROHIBITED PAYMENTS.** Except for interest on the public debt, no money shall be paid out of the treasury unless upon an appropriation made by law and a warrant drawn by the proper officer in pursuance thereof.

ARTICLE IX
ENVIRONMENT AND NATURAL RESOURCES

Section 1. **PROTECTION AND IMPROVEMENT.** (1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.

(2) The legislature shall provide for the administration and enforcement of this duty.

(3) The legislature shall provide adquate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

Section 2. **RECLAMATION.** All lands disturbed by the taking of natural resources shall be reclaimed. The legislature shall provide effective requirements and standards for the reclamation of lands disturbed.

Section 3. **WATER RIGHTS.** (1) All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed.

(2) The use of all water that is now or may hereafter be appropriated for sale, rent, distribution, or other beneficial use, the right of way over the lands of others for all ditches, drains, flumes, canals, and aqueducts necessarily used in connection therewith, and the sites for reservoirs necessary for collecting and storing water shall be held to be a public use.

(3) All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.

(4) The legislature shall provide for the administration, control, and regulation of water rights and shall establish a system of centralized records, in addition to the present system of local records.

Section 4. **CULTURAL RESOURCES.** The legislature shall provide for the identification, acquisition, restoration, enhancement, preservation, and administration of scenic, historic, archeologic, scientific, cultural, and recreational areas, sites, records and objects, and for their use and enjoyment by the people.

ARTICLE X
EDUCATION AND PUBLIC LANDS

Section 1. **EDUCATIONAL GOALS AND DUTIES.** (1) It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.

(2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.

(3) The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system.

Section 2. **PUBLIC SCHOOL FUND.** The public school fund of the state shall consist of: (1) Proceeds from the school lands which have been or may hereafter be granted by the United States,

(2) Lands granted in lieu thereof,

(3) Lands given or granted by any person or corporation under any law or grant of the United States,

(4) All other grants of land or money made from the United States for general educational purposes or without special purpose,

(5) All interests in estates that escheat to the state,

(6) All unclaimed shares and dividends of any corporation incorporated in the state,

(7) All other grants, gifts, devises or bequests made to the state for general educational purposes.

Section 3. **PUBLIC SCHOOL FUND INVIOLATE.** The public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion.

Section 4. **BOARD OF LAND COMMISSIONERS.** The governor, superintendent of public instruction, auditor, secretary of state, and attorney general constitute the board of land commissioners. It has the authority to direct, control, lease, exchange, and sell school lands and lands which have been or may be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be provided by law.

Section 5. **PUBLIC SCHOOL FUND REVENUE.** (1) Ninety-five percent of all the interest received on the public school fund and ninety-five percent of all rent received from the leasing of school lands and all other income from the public school fund shall be equitably apportioned annually to public elementary and secondary school districts as provided by law.

(2) The remaining five percent of all interest received on the public school fund, and the remaining five percent of all rent received from the leasing of school lands and all other income from the public school fund shall annually be added to the public school fund and become and forever remain an inseparable and inviolable part thereof.

Section 6. **AID PROHIBITED TO SECTARIAN SCHOOLS.** (1) The legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination.

(2) This section shall not apply to funds from federal sources provided to the state for the express purpose of distribution to non-public education.

Section 7. **NON-DISCRIMINATION IN EDUCATION.** No religious or partisan test or qualification shall be required of any teacher or student as a condition of admission into any public educational institution. Attendance shall not be required at any religious service. No sectarian tenets shall be advocated in any public educational institution of the state. No person shall be refused admission to any public educational institution on account of sex, race, creed, religion, political beliefs, or national origin.

Section 8. **SCHOOL DISTRICT TRUSTEES.** The supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law.

Section 9. **BOARDS OF EDUCATION.** (1) There is a state board of education composed of the board of regents of higher education and the board of public education. It is responsible for long-range planning, and for coordinating and evaluating policies and programs for the state's educational systems. It shall submit unified budget requests. A tie vote at any meeting may be broken by the governor, who is an ex officio member of each component board.

(2) (a) The government and control of the Montana university system is vested in a board of regents of higher education which shall have full power, responsibility, and authority to supervise, coordinate, manage and control the Montana university system and shall supervise and coordinate other public educational institutions assigned by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms, as provided by law. The governor and superintendent of public instruction are ex officio non-voting members of the board.

(c) The board shall appoint a commissioner of higher education and prescribe his term and duties.

(d) The funds and appropriations under the control of the board of regents are subject to the same audit provisions as are all other state funds.

(3) (a) There is a board of public education to exercise general supervision over the public school system and such other public educational institutions as may be assigned by law. Other duties of the board shall be provided by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms as provided by law. The governor, commissioner of higher education and state superintendent of public instruction shall be ex officio non-voting members of the board.

Section 10. **STATE UNIVERSITY FUNDS.** The funds of the Montana university

system and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be provided by law, and shall be guaranteed by the state against loss or diversion. The interest from such invested funds, together with the rent from leased lands or properties, shall be devoted to the maintenance and perpetuation of the respective institutions.

Section 11. **PUBLIC LAND TRUST, DISPOSITION.** (1) All lands of the state that have been or may be granted by congress, or acquired by gift or grant or devise from any person or corporation, shall be public lands of the state. They shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised.

(2) No such land or any estate or interest therein shall ever be disposed of except in pursuance of general laws providing for such disposition, or until the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

(3) No land which the state holds by grant from the United States which prescribes the manner of disposal and minimum price shall be disposed of except in the manner and for at least the price prescribed without the consent of the United States.

(4) All public land shall be classified by the board of land commissioners in a manner provided by law. Any public land may be exchanged for other land, public or private, which is equal in value and, as closely as possible, equal in area.

ARTICLE XI
LOCAL GOVERNMENT

Section 1. **DEFINITION.** The term "local government units" includes, but is not limited to, counties and incorporated cities and towns. Other local government units may be established by law.

Section 2. **COUNTIES.** The counties of the state are those that exist on the date of ratification of this constitution. No county boundary may be changed or county seat transferred until approved by a majority of those voting on the question in each county affected.

Section 3. **FORMS OF GOVERNMENT.** (1) The legislature shall provide methods for governing local government units and procedures for incorporating, classifying, merging, consolidating, and dissolving such units, and altering their boundaries. The legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by majority of those voting on the question.

(2) One optional form of county government includes, but is not limited to, the election of three county commissioners, a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, and assessor, a coroner, and a public administrator. The terms, qualifications, duties, and compensation of those offices shall be provided by law. The Board of county commissioners may consolidate two or more such offices. The Boards of two or more counties may provide for a joint office and for the election of one official to perform the duties of any such office in those counties.

Section 4. **GENERAL POWERS.** (1) A local government unit without self-government powers has the following general powers:

(a) An incorporated city or town has the powers of a municipal corporation and legislative, administrative, and other powers provided or implied by law.

(b) A county has legislative, administrative, and other powers provided or implied by law.

(c) Other local government units have powers provided by law.

(2) The powers of incorporated cities and towns and counties shall be liberally construed.

Section 5. **SELF-GOVERNMENT CHARTERS.** (1) The legislature shall provide procedures permitting a local government unit or combination of units to frame, adopt, amend,

revise, or abandon a self-government charter with the approval of a majority of those voting on the question. The procedures shall not require approval of a charter by a legislative body.

(2) If the legislature does not provide such procedures by July 1, 1975, they may be established by election either:

(a) Initiated by petition in the local government unit or combination of units; or

(b) Called by the governing body of the local government unit or combination of units.

(3) Charter provisions establishing executive, legislative, and administrative structure and organization are superior to statutory provisions.

Section 6. **SELF-GOVERNMENT POWERS.** A local government unit adopting a self-government charter may exercise any power not prohibited by this constitution, law, or charter. This grant of self-government powers may be extended to other local government units through optional forms of government provided for in section 3.

Section 7. **INTERGOVERNMENTAL COOPERATION.** (1) Unless prohibited by law or charter, a local government unit may

(a) cooperate in the exercise of any function, power, or responsibility with,

(b) share the services of any officer or facilities with,

(c) transfer or delegate any function, power, responsibility, or duty of any officer to one or more other local government units, school districts, the state, or the United States.

(2) The qualified electors of a local government unit may, by initiative or referendum, require it do do so.

Section 8. **INITIATIVE AND REFERENDUM.** The legislature shall extend the initiative and referendum powers reserved to the people by the constitution to the qualified electors of each local government unit.

Section 9. **VOTER REVIEW OF LOCAL GOVERNMENT.** (1) The legislature shall, within four years of the ratification of this constitution, provide procedures requiring each local government unit or combination of units to review its structure and submit one alternative form of government to the qualified electors at the next general or special election.

(2) The legislature shall require a review procedure once every ten years after the first election.

ARTICLE XII
DEPARTMENTS AND INSTITUTIONS

Section 1. **AGRICULTURE.** (1) The legislature shall provide for a Department of Agriculture and enact laws and provide appropriations to protect, enhance, and develop all agriculture.

(2) Special levies may be made on livestock and on agricultural commodities for disease control and indemnification, predator control, and livestock and commodity inspection, protection, research, and promotion. Revenue derived shall be used solely for the purposes of the levies.

Section 2. **LABOR.** (1) The legislature shall provide for a Department of Labor and Industry, headed by a Commissioner appointed by the governor and confirmed by the senate.

(2) A maximum period of 8 hours is a regular day's work in all industries and employment except agriculture and stock raising. The legislature may change this maximum period to promote the general welfare.

Section 3. **INSTITUTIONS AND ASSISTANCE.** (1) The state shall establish and support institutions and facilities as the public good may require, including homes which may be necessary and desirable for the care of veterans.

(2) Persons committed to any such institutions shall retain all rights except those necessarily suspended as a condition of commitment. Suspended rights are restored upon termination of the state's responsibility.

(3) The legislature shall provide such economic assistance and social and rehabilitative services as may be necessary for those inhabitants who, by reason of age, infirmities, or misfortune may have need for aid of society.

ARTICLE XIII
GENERAL PROVISIONS

Section 1. **NON-MUNICIPAL CORPORATIONS.** (1) Corporate charters shall be granted, modified, or dissolved only pursuant to general law.

(2) The legislature shall provide protection and education for the people against harmful and unfair practices by either foreign or domestic corporations, individuals, or associations.

(3) The legislature shall pass no law retrospective in its operations which imposes on the people a new liability in respect to transactions or considerations already passed.

Section 2. **CONSUMER COUNSEL.** The legislature shall provide for an office of consumer counsel which shall have the duty of representing consumer interests in hearings before the public service commission or any other successor agency. The legislature shall provide for the funding of the office of consumer counsel by a special tax on the net income or gross revenues of regulated companies.

Section 3. **SALARY COMMISSION.** The legislature shall create a salary commission to recommend compensation for the judiciary and elected members of the legislative and executive branches.

Section 4. **CODE OF ETHICS.** The legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for members of the legislature and all state and local officers and employees.

Section 5. **EXEMPTION LAWS.** The legislature shall enact liberal homestead and exemption laws.

Section 6. **PERPETUITIES.** No perpetuities shall be allowed except for charitable purposes.

ARTICLE XIV
CONSTITUTIONAL REVISION

Section 1. **CONSTITUTIONAL CONVENTION.** The legislature, by an affirmative vote of two-thirds of all the members, whether one or more bodies, may at any time submit to the qualified electors the question of whether there shall be an unlimited convention to revise, alter, or amend this constitution.

Section 2. **INITIATIVE FOR CONSTITUTIONAL CONVENTION.** (1) The people may by initiative petition direct the secretary of state to submit to the qualified electors the question of whether there shall be an unlimited convention to revise, alter, or amend this constitution. The petition shall be signed by at least ten percent of the qualified electors of the state. That number shall include at least ten percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The secretary of state shall certify the filing of the petition in his office and cause the question to be submitted at the next general election.

Section 3. **PERIODIC SUBMISSION.** If the question of holding a convention is not otherwise submitted during any period of 20 years, it shall be submitted as provided by law at the general election in the twentieth year following the last submission.

Section 4. **CALL OF CONVENTION.** If a majority of those voting on the question answer in the affirmative, the legislature shall provide for the calling thereof at its next session. The number of delegates to the convention shall be the same as that of the larger body of the legislature. The qualifications of delegates shall be the same as the highest qualifications required for election to the legislature. The legislature shall determine whether the delegates may be nominated on a partisan or a nonpartisan basis. They shall be elected at the same places and in the same districts as are the members of the legislative body determining the number of delegates.

Section 5. **CONVENTION EXPENSES.** The legislature shall, in the act calling the convention, designate the day, hour, and place of its meeting, and fix and provide for the pay of its members and officers and the necessary expenses of the convention.

Section 6. **CONVENTION DUTIES.** Before proceeding, the delegates shall take the oath provided in this constitution. Vacancies occurring shall be filled in the manner provided for filling vacancies in the legislature if not otherwise provided by law.

Section 7. **CONVENTION DUTIES.** The convention shall meet after the election of the delegates and prepare such revisions, alterations, or amendments to the constitution as may be deemed necessary. They shall be submitted to the qualified electors for ratification or rejection as a whole or in separate articles or amendments as determined by the convention at an election appointed by the convention for that purpose not less than two months after adjournment. Unless so submitted and approved by a majority of the electors voting thereon, no such revision, alteration, or amendment shall take effect.

Section 8. **AMENDMENT BY LEGISLATIVE REFERENDUM.** Amendments to this constitution may be proposed by any member of the legislature. If adopted by an affirmative roll call vote of two thirds of all the members thereof, whether one or more bodies, the proposed amendment shall be submitted to the qualified electors at the next general election. If approved by a majority of the electors voting thereon, the amendment shall become a part of this constitution on the first day of July after certification of the election returns unless the amendment provides otherwise.

Section 9. **AMENDMENT BY INITIATIVE.** (1) The people may also propose constitutional amendments by initiative. Petitions including the full text of the proposed amendment shall be signed by at least ten percent of the qualified electors of the state. That number shall include at least ten percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The petitions shall be filed with the secretary of state. If the petitions are found to have been signed by the required number of electors, the secretary of state shall cause the amendment to be published as provided by law twice each month for two months previous to the next regular state-wide election.

(3) At that election, the proposed amendment shall be submitted to the qualified electors for approval or rejection. If approved by a majority voting thereon, it shall become a part of the constitution effective the first day of July following its approval, unless the amendment provides otherwise.

Section 10. **PETITION SIGNERS.** The number of qualified electors required for the filing of any petition provided for in this Article shall be determined by the number of votes cast for the office of governor in the preceding general election.

Section 11. **SUBMISSION.** If more than one amendment is submitted at the same election, each shall be so prepared and distinguished that it can be voted upon separately.

ADOPTION SCHEDULE

These Schedule provisions are part of this Constitution only for the limited purposes of determining whether this Constitution has been adopted, determining what changes result from the vote on each of the separately submitted issues, and establishing the general effective date of this Constitution. No provision of this Schedule shall be published unless it becomes part of the Constitution as the result of the adoption of a separately submitted provision.

Section 1. This Constitution, if approved by a majority of those voting at the election as provided by the Constitution of 1889, shall take effect on July 1, 1973, except as otherwise provided in sections 1 and 2 of the Transition Schedule. The Constitution of 1889, as amended, shall thereafter be of no effect.

Section 2. (1) If separate issue 2A concerning the unicameral form of the legislature is approved by a majority of those voting at the election and if the proposed Constitution is approved by the electors, then:

(a) ARTICLE V, THE LEGISLATURE, shall be deleted and the following substituted therefor:

ARTICLE V
THE LEGISLATURE

Section 1. ***POWER AND STRUCTURE.*** *The legislative power is vested in a legislature of one chamber whose members are designated senators. The people reserve to themselves the powers of initiative and referendum.*

Section 2. ***SIZE.*** *The number of senators shall be provided by law, but it shall not be smaller than 90 nor larger than 105.*

Section 3. ***ELECTION AND TERMS.*** *A senator shall be elected for a term of four years to begin on a date provided by law. One-half of the senators shall be elected every two years.*

Section 4. ***QUALIFICATIONS.*** *A candidate for the legislature shall be a resident of the state for at least one year next preceding the general election. For six months next preceding the general election, he shall be a resident of the county if it contains one or more districts or of the district if it contains all or parts of more than one county.*

Section 5. ***COMPENSATION.*** *Each member of the legislature shall receive compensation for his services and allowances provided by law. No legislature may fix its own compensation.*

Section 6. ***SESSIONS.*** *The legislature shall be a continuous body for two-year periods beginning when newly elected members take office. Any business, bill, or resolution pending at adjournment of a session shall carry over with the same status to any other session of the legislature during the biennium. The legislature shall meet at least once a year in regular sessions of not more than 60 legislative days. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor or at the written request of a majority of the members.*

Section 7. ***VACANCIES.*** *A vacancy in the legislature shall be filled by special election for the unexpired term unless otherwise provided by law.*

Section 8. ***IMMUNITY.*** *A member of the legislature is privileged from arrest during attendance at sessions of the legislature and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace. He shall not be questioned in any other place for any speech or debate in the legislature.*

Section 9. ***DISQUALIFICATION.*** *No member of the legislature shall, during the term for which he shall have been elected, be appointed to any civil office under the state; and no member of congress, or other person holding an office (except notary public, or the militia) under the United States or this state, shall be a member of the legislature during his continuance in office.*

Section 10. ***ORGANIZATION AND PROCEDURE.*** *(1) The legislature shall judge the election and qualifications of senators. It may by law vest in the courts the power to try and determine contested elections. It shall choose its officers from among its members, keep a journal, and make rules for its proceedings. It may expel or punish a senator for good cause shown with the concurrence of two-thirds of all the senators.*

(2) A majority of the senators constitutes a quorum. A smaller number may adjourn from day to day and compel attendance of absent members.

(3) The sessions of the legislature and of the committee of the whole, all committee meetings, and all hearings shall be open to the public.

(4) The legislature may establish a legislative council and other interim committees. The legislature shall establish a legislative post-audit committee which shall supervise post-auditing duties provided by law.

Section 11. ***BILLS.*** *(1) A law shall be passed by bill which shall not be so altered or amended on its passage through the legislature as to change its original purpose. No bill shall become law except by a vote of the majority of all members present and voting.*

(2) Every vote of each member on each substantive question in the legislature, in any committee, or in committee of the whole shall be recorded and made public. On final passage, the vote shall be taken by ayes and noes and the names entered on the journal.

(3) Each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject, clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void.

(4) A general appropriation bill shall contain only appropriations for the ordinary expenses of the legislative, executive, and judicial branches, for interest on the public debt, and for public schools. Every other appropriation shall be made by a separate bill containing but one subject.

(5) No appropriation shall be made for religious, charitable, industrial, educational, or benevolent purposes to any private individual, private association, or private corporation not under control of the state.

(6) A law may be challenged on the ground of noncompliance with this section only within two years after its effective date.

Section 12. ***LOCAL AND SPECIAL LEGISLATION.*** *The legislature shall not pass a special or local act when a general act is, or can be made, applicable.*

Section 13. ***IMPEACHMENT.*** *(1) The governor, executive officers, heads of state departments, judicial officers, and such other officers as may be provided by law are subject to impeachment, and upon conviction shall be removed from office. Other proceedings for removal from public office for cause may be provided by law.*

(2) The legislature shall provide for the manner, procedure, and causes for impeachment and shall provide for a tribunal.

(3) Impeachment can be brought only by a two-thirds vote of the legislature. The tribunal hearing the charges shall convict only by a vote of two-thirds or more of its members.

(4) Conviction shall extend only to removal from office, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law.

Section 14. ***DISTRICTING AND APPORTIONMENT.*** *(1) The state shall be divided into as many districts as there are senators and each district shall elect one senator. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.*

(2) In the legislative session following ratification of this constitution and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of the legislature shall each select two commissioners. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time provided, a majority of the supreme court shall select him.

(3) The commission shall submit its plan to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendations. Within 30 days thereafter, the commission shall file its final plan with the secretary of state and it shall become law. The commission is then dissolved.

Section 15. ***REFERENDUM OF UNICAMERAL LEGISLATURE.*** *(1) In 1980 the secretary of state shall place upon the ballot at the general election the question: "Shall the unicameral legislature form be continued?"*

(2) If a majority of the qualified electors voting on the question answer in the affirmative, the form shall be continued, and this section shall be of no further effect.

(3) If a majority of the qualified electors voting on the question answer in the negative, Article V of this constitution is amended by deleting sections 1, 2, 3, 10, 13, and 14, and inserting in lieu thereof the following:

(a) "Section 1. ***POWER AND STRUCTURE.*** *The legislative power is vested in a legislature consisting of a senate and a house of representatives. The people reserve to themselves the powers of initiative and referendum."*

(b) "Section 2. ***SIZE.*** *The size of the legislature shall be provided by law, but the senate shall not have more than 50 or fewer than 40 members and the house shall not have more than 100 or fewer than 80 members."*

*(c) "Section 3. **ELECTION AND TERMS.** A member of the house of representatives shall be elected for a term of two years and a member of the senate for a term of four years, each to begin on a date provided by law. One-half of the senators shall be elected every two years."*

*(d) "Section 10. **ORGANIZATION AND PROCEDURE.** (1) Each house shall judge the election and qualifications of its members. It may by law vest in the courts the power to try and determine contested elections. Each house shall choose its officers from among its members, keep a journal, and make rules for its proceedings. Each house may expel or punish a member for good cause shown with the concurrence of two-thirds of all its members.*

"(2) A majority of each house constitutes a quorum. A smaller number may adjourn from day to day and compel attendance of absent members.

"(3) The sessions of the legislature and of the committee of the whole, all committee meetings, and all hearings shall be open to the public.

"(4) The legislature may establish a legislative council and other interim committees. The legislature shall establish a legislative post-audit committee which shall supervise post-auditing duties provided by law.

"(5) Neither house shall, without the consent of the other, adjourn or recess for more than three days or to any place other than that in which the two houses are sitting."

*(e) "Section 13. **IMPEACHMENT.** (1) The governor, executive officers, heads of state departments, judicial officers, and such other officers as may be provided by law are subject to impeachment, and upon conviction shall be removed from office. Other proceedings for removal from public office for cause may be provided by law.*

"(2) The legislature shall provide for the manner, procedure and causes for impeachment and may select the senate as tribunal.

"(3) Impeachment shall be brought only by a two-thirds vote of the house. The tribunal hearing the charges shall convict only by a vote of two-thirds or more of its members.

"(4) Conviction shall extend only to removal from office, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law."

*(f) "Section 14. **DISTRICTING AND APPORTIONMENT.** (1) The state shall be divided into as many districts as there are members of the house, and each district shall elect one representative. Each senate district shall be composed of two adjoining house districts, and shall elect one senator. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.*

"(2) In the legislative session following this amendment and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of each house shall each designate one commissioner. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time provided, a majority of the supreme court shall select him.

"(3) The commission shall submit its plan to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendations. Within 30 days thereafter, the commission shall file its final plan with the secretary of state and it shall become law. The commission is then dissolved."

(4) The members of the unicameral legislature shall remain in office and their authority to act shall continue until the members of a bicameral body are elected and qualified.

(5) The Senate chamber existing upon the date of adoption of this Article shall remain intact until the election provided for in this section has determined whether the unicameral legislature is to continue.

(6) When the provisions of this section have been carried out, it shall be of no further effect.

(b) The words "of each house" are deleted from subsection (2) of section 6 and from section 8, ARTICLE VIII, REVENUE AND FINANCE.

(c) The word "legislature" is substituted for "senate" in subsections (1), (2), and (4) of section 8, ARTICLE VI, THE EXECUTIVE, in subsections (1) and (2) of section 8, ARTICLE VII, THE JUDICIARY, and in subsection (1) of section 2, ARTICLE XII, DEPARTMENTS AND INSTITUTIONS.

(2) If separate issue 2A concerning the unicameral form of the legislature is not approved by the electors and if the proposed Constitution is approved by the electors, then ARTICLE V, THE LEGISLATURE, shall be retained.

Section 3. (1) If separate issue 3A is not approved by a majority of those voting at the election and if the proposed Constitution is approved by the electors, then section 9 of ARTICLE III, GENERAL GOVERNMENT shall be retained.

(2) If separate issue 3A is approved by the electors and if the proposed Constitution is approved by the electors, then section 9 shall be deleted from ARTICLE III, GENERAL GOVERNMENT and the following substituted therefor: "Section 9. **GAMBLING.** All forms of gambling, lotteries, and gift enterprises are prohibited unless authorized by acts of the legislature or by the people through initiative or referendum."

Section 4. If separate issue 4B is approved by a majority of those voting at the election and if the proposed Constitution is approved by the electors, then there shall be added to section 28, ARTICLE II, DECLARATION OF RIGHTS, the following sentence: "Death shall not be prescribed as a penalty for any crime against the state." And there shall be deleted from section 21 of the same ARTICLE the following. ", except for capital offenses, when the proof is evident or the presumption great."

TRANSITION SCHEDULE

The following provisions shall remain part of this Constitution until their terms have been executed. Once each year the attorney general shall review the following provisions and certify to the secretary of state which, if any, have been executed. Any provisions so certified shall thereafter be removed from this Schedule and no longer published as part of this Constitution.

Section 1. Accelerated Effective Date

Section 2. Delayed Effective Date

Section 3. Prospective Operation of Declaration of Rights

Section 4. Terms of Judiciary

Section 5. Terms of Legislators

Section 6. General Transition

Section 1. **ACCELERATED EFFECTIVE DATE.** Section 6 (SESSIONS) and section 14 (DISTRICTING AND APPORTIONMENT) of Article V, THE LEGISLATURE, shall be effective January 1, 1973.

Section 2. **DELAYED EFFECTIVE DATE.** The provisions of sections 1, 2, and 3 of Article V, THE LEGISLATURE, shall not become effective until the date the first redistricting and reapportionment plan becomes law.

Section 3. **PROSPECTIVE OPERATION OF DECLARATION OF RIGHTS.** Any rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive.

Section 4. **TERMS OF JUDICIARY.** Supreme court justices, district court judges, and justices of the peace holding office when this Constitution becomes effective shall serve the terms for which they were elected or appointed.

Section 5. **TERMS OF LEGISLATORS.** (1) The terms of all legislators elected before the effective date of this Constitution shall end on December 31 of the year in which the first redistricting and reapportionment plan becomes law.

(2) The senators first elected under this Constitution shall draw lots to establish a term of two years for one-half of their number.

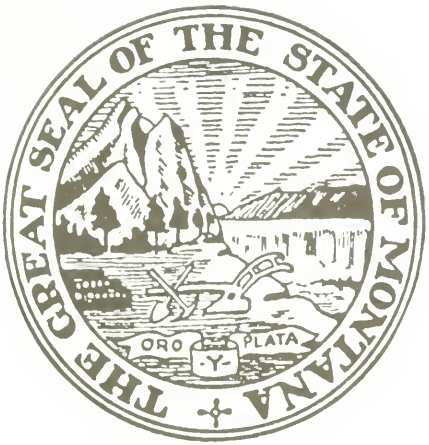
Section 6. **GENERAL TRANSITION.** (1) The rights and duties of all public bodies shall remain as if this Constitution had not been adopted with the exception of such changes as are contained in this Constitution. All laws, ordinances, regulations, and rules of court

not contrary to, or inconsistent with, the provisions of this Constitution shall remain in force, until they shall expire by their own limitation or shall be altered or repealed pursuant to this Constitution.

(2) The validity of all public and private bonds, debts, and contracts, and of all suits, actions, and rights of action, shall continue as if no change had taken place.

(3) All officers filling any office by election or appointment shall continue the duties thereof, until the end of the terms to which they were appointed or elected, and until their offices shall have been abolished or their successors selected and qualified in accordance with this Constitution or laws enacted pursuant thereto.

Done in open convention at the city of Helena, in the state of Montana, this twenty-second day of March, in the year of our Lord one thousand nine hundred and seventy-two.



Leo Graybill, Jr. President

ATTEST:

Jean M. Bowman
Secretary

Magnus Aasheim

John H. Anderson, Jr.

Oscar L. Anderson

Harold Arbanas

Franklin Arness

Cedor B. Aronow

William H. Artz

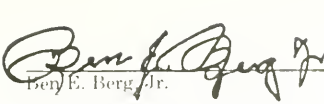
Thomas M. Ask

Betty Babcock

Lloyd Barnard

Grace C. Bates

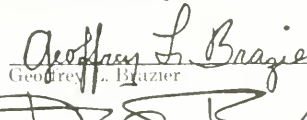
Don E. Belcher


Ben E. Berg, Jr.

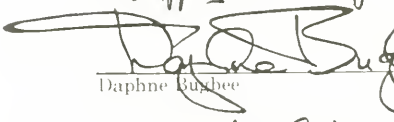
E.M. Berthelson

Chet Blaylock

Virginia H. Blend


Geoffrey L. Brazier

Bruce M. Brown


Daphne Buybee

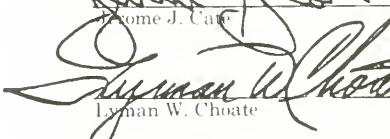
William A. Burkhardt

Marjorie Cain

Bob Campbell

Jerome J. Cate

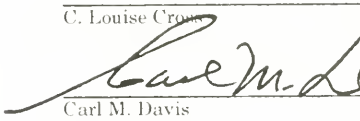
Richard J. Champoux

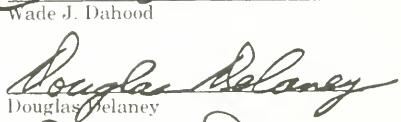

Lyman W. Choate

Max Conover

C. Louise Cross

Wade J. Dahood


Carl M. Davis


Douglas Delaney

Maurice Driscoll

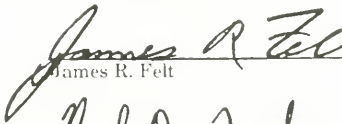
Dave Drum

Dorothy Eck

Marian S. Erdmann

Leslie Eskildsen

Mark Etchart


James R. Felt

Donald R. Foster

Noel D. Furlong

J.C. Garlington

E.S. Gysler

Otto T. Habedank

Catherine Pemberton

Donald Rebal

Arlyne E. Reichert

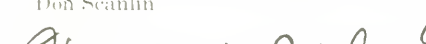
Mrs. Mae Nan Robinson

Richard B. Roeder

George W. Rollins

Miles Romney

Sterling Rygg


Don Scanlin

John M. Schlitz

Henry L. Siderius

Clark E. Simon

Carman M. Skari

M. Lynn Sparks

Lucile Speer

R.F. Studer, Sr.

Mrs. John (Veronica) Sullivan

William H. Swanberg

John H. Toole

Mrs. Edith M. Van Buskirk

Robert Vermillion

Roger A. Wagner

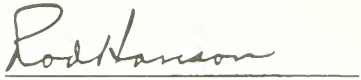
Jack K. Ward

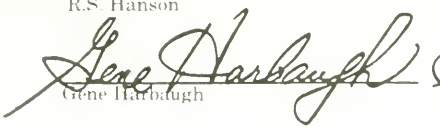
Margaret S. Warden

Archie O. Wilson

Robert F. Woodmansey

R.S. Hanson

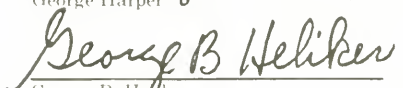

Rod Hanson


Gene Harbaugh

Paul K. Harlow

George Harper

Daniel W. Harrington


George B. Heliker

David L. Holland

Arnold W. Jacobsen

George H. James

Torrey B. Johnson

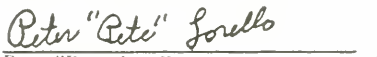
Thomas F. Joyce

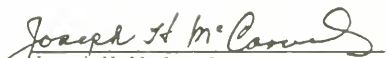
A.W. Kamhoot

Robert Lee Kelleher

John H. Leuthold

Jerome T. Loendorf


Peter "Pete" Lorello


Joseph H. McCarvel

Russell C. McDonough

Mike McKeon

Charles B. McNeil

Charles H. Mahoney

Rachell K. Mansfield

Fred J. Martin

J. Mason Melvin

Lyle R. Monroe

Marshall Murray

Robert B. Noble

Richard A. Nutting

Mrs. Thomas Payne